Report of the
MINISTERIAL ACTION COMMITTEE

established to undertake a

REVIEW OF THE
WORKERS' COMPENSATION BOARD

FINAL REPORT

91-01702/

July 4, 1990

Honorable Roberta Hubley
Minister
Department of Labour
P.O. Box 2000
Charlottetown, P.E.I.
C1A 7N8

Dear Madame Minister:

We are pleased to submit herewith the unanimous report of the Ministerial Action Committee established to undertake a review of the Workers' Compensation Board.

In accordance with the broad mandate provided the Committee by Government, we have endeavored to provide recommendations which, we are convinced, will provide for a more efficient, effective and fair compensation system when they are adopted into law and practice.

Respectively submitted,

MINISTERIAL ACTION COMMITTEE
WORKERS' COMPENSATION REVIEW

Bob Crockett
Chairperson

Clive Cudmore
Member

Ray McBride
Member

William Gillis
Member

Brian Moriarity
Member

Frances Tremere
Member

Harry Snow
Member

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PREAMBLE

ESTABLISHMENT OF THE MINISTERIAL ACTION COMMITTEE

On April 13, 1989, the Prince Edward Island Government appointed a seven member Ministerial Action Committee to undertake a comprehensive review of the Workers' Compensation Board of Prince Edward Island.

The Honorable Wayne D. Cheverie, Q.C., then Minister of Labour, formally announced the appointment of the Ministerial Action Committee in the Legislative Assembly on Friday, April 21, 1989 (Statement by Minister, Appendix "A").

MEMBERS OF THE MINISTERIAL ACTION COMMITTEE

Mr. Robert Crockett	Chairperson Former Deputy Minister of Labour
Mrs. Frances Tremere	Licensed Nursing Assistant (Health Care)
Mr. William Gillis	Businessman (Manufacturing)
Mr. Brian Moriarity	Union General Manager (Public Sector)
Mr. Harry Snow	Businessman (Construction)
Mr. Ray McBride	Union Business Agent (Construction)
Mr. Clive Cudmore	Businessman (Retail)

MANDATE

(1) To undertake a comprehensive review of the *Workers' Compensation Act* and Regulations;

(2) To carry out a thorough review of the policies and practices of the Workers' Compensation Board;

(3) To review the structure of the Workers' Compensation Board; and

(4) Report to the Minister of Labour on all these matters, including recommended changes to the Act; Regulations; operating procedures or structure, if such are determined necessary, and to make such report within eighteen (18) months of the date of appointment of the Ministerial Action Committee. Should the Committee feel it appropriate to do so, they may make an interim report referencing any matters which they may feel warrants the immediate attention of the Minister.

The mandate then provides for a review of the three component parts of the present day system of Workers' Compensation: the law, as reflected in the *Workers' Compensation Act* and Regulations; the policies and practices as determined from time to time by the Workers' Compensation Board; and, the structures of the system.

TERMS OF REFERENCE

No constraints were placed on the activities of the Committee other than the time constraint. The Committee was to report to the Minister of Labour within eighteen (18) months of its appointment (i.e. by October, 1990).

At its initial meeting on Wednesday, May 31, 1989, the Committee reviewed its mandate and determined the manner in which it would proceed in making its report.

SCOPE OF THE REVIEW

The review will encompass all facets of the Workers' Compensation System. The Act, Regulations, structure of the Board, staff functions, Board practices and policies, the manner of handling situations and comparisons with other jurisdictions.

ROLES OF ADVISORS AND SUPPORT STAFF

Advisors and support staff will act as resource persons to provide interpretation of their respective mandates, laws, regulations, policies, and to obtain studies, reports, papers, etc., as required by the Committee.

METHOD OF DECISION MAKING

The manner and methods to be employed by the Committee in making it's final recommendations was discussed in detail and it was agreed that there will be only one report, which will be issued by the Committee, as the *Report of the Ministerial Action Committee*. The Committee agreed to make decisions on a consensus basis and only use a voting procedure in an obvious deadlock situation.

METHODOLOGY

The Committee's initial activity was focused on informing all interested parties of the review and requesting the input of individuals and organizations through written briefs and/or verbal presentation on any matters related to the mandate of the Committee.

Advertisements (Appendix "B") were placed in all daily and weekly newspapers throughout the province inviting interested individuals and organizations to present written or verbal submissions, or both, to the Committee.

These advertisements were run on pre-selected dates commencing on June 14, 1989, and running throughout August 30, 1989.

The Committee received 40 written submissions (Appendix "C"). All those who submitted were provided with the opportunity to appear before the Committee to elaborate upon, or clarify their written submission.

PUBLIC HEARINGS

The Committee held its public hearings, based upon the requests which it received, in Charlottetown and Summerside in October of 1989 (Appendix "D").

In all, 31 organizations and interested individuals made presentations to and were questioned by the Committee.

All presenting organizations and interested individuals were initially contacted by telephone to inform them of the time, date and place of their hearing. The telephone calls were followed up with individual letters confirming the date, time and place of their appearance.

Overall, only 5 organizations or interested individuals, who were scheduled to appear, failed to show up at their appointed time.

The Committee had the opportunity to hear from 4 employee representatives of the Workers' Compensation Board, who provided the Committee with their points of view, respecting matters related to the mandate. This, we feel, was a valuable experience as it provided the Committee with some insight into the "inner workings" of the Workers' Compensation Board, as seen through the eyes of staff persons.

THE ORIGIN OF THE WORKERS' COMPENSATION SYSTEM

We do not propose to review in detail the historical origins of Workers' Compensation legislation in Canada or in Prince Edward Island.

However, in examining the Workers' Compensation system in P.E.I. today and for the purposes of making recommendations for the future it is important, we believe, to highlight the basic tenants of the original deal which created the system.

In 1910, the government of Ontario appointed the then Chief Justice, Sir William Meredith, to study the liability of employers to compensate their employees for injuries received in the course of their employment.

Chief Justice Meredith's study resulted in his now famous report; *"The Final Report on Laws Relating to the Liability of Employers,"* of 1913. (Appendix "F")

Meredith recommended that workers receive benefits for work related injuries irrespective of who was at fault and, in return, workers would give up their right to sue the employer at common law.

This became known as the *"HISTORIC COMPROMISE"* of Workers' Compensation from which both employers and workers have benefited.

The basic elements of the Meredith report of 1913 are elements which continue to characterize the Workers' Compensation systems of today:

— COMPENSATION FOR WORK INJURIES AND ILLNESS IS A RIGHT, REGARDLESS OF FAULT.

— COMPENSATION BENEFITS SHOULD BE BASED ON LOST EARNINGS SUFFERED BY A WORKER.

— ADMINISTRATION OF THE COMPENSATION SYSTEM SHOULD BE BY AN INDEPENDENT COMMISSION WITHOUT RECOURSE TO THE COURTS.

— COMPENSATION MUST BE PAID FOR BY EMPLOYERS AS AN ORDINARY COST OF DOING BUSINESS.

— COMPENSATION MUST BE BASED ON COLLECTIVE LIABILITY.

— INJURED WORKERS ARE NO LONGER ABLE TO SUE THEIR EMPLOYERS FOR NEGLIGENCE.

The Ontario legislation first came into force in 1915. Most other provinces enacted similar legislation within the decade following. The federal government passed the "Government Employees' Compensation Act" in 1918 for its employees, but used the provincial compensation boards to adjudicate claims under the same conditions and rates as determined by the relevant act in the province where the worker is employed. Newfoundland passed its first Workers' Compensation legislation in 1951. P.E.I. created its initial compensation system in 1949.

The basic *Historic Compromise* on which the compensation system is based, i.e. "no fault, employer--financed compensation in exchange for the right to sue negligent employers," is still sound in principle and remain the cornerstones of our present day Workers' Compensation Systems throughout our country.

A COMPARISON OF WORKERS' COMPENSATION BENEFITS IN CANADA

In Canada there are twelve jurisdictions, each with its own Workers' Compensation Act. As a result, each jurisdiction provides differing levels of benefits, often calculated on different wage bases, as well as various services.

It should be noted that compensation legislation is becoming increasingly complex and as a result, this summary information does not attempt to reflect that complexity, but simply provides some of the statistical indicators which are central to compensation systems.

The following information is excerpted from data compiled by the Association of Workers' Compensation Boards of Canada - Benefit Comparisons as of January 1, 1989 and up-dated as of January 1, 1990.

MAXIMUM COMPENSABLE YEARLY SALARY (MCYS) VS. WAGE BASE FOR BENEFIT CALCULATION 1989/1990

JURISDICTION	MCYS	WAGE BASE
British Columbia	$43,400	75% of Average Earnings
Alberta	40,000	90% of Net Earnings
Saskatchewan	48,000	90% of Net Earnings
Manitoba	36,000	75% of Average Earnings
Ontario	38,500	90% of Net Earnings
Quebec	40,000	90% of Weighted Net Earnings
New Brunswick	35,400	90% of Net Earnings
Nova Scotia	36,000	75% of Average Weekly Earnings
Newfoundland	45,500	90% of Net Earnings
N.W.T.	40,000	90% of Net Earnings
Yukon	40,000	75% of Average Earnings
PRINCE EDWARD ISLAND	23,000	75% of Average Weekly Earnings

Some jurisdictions have within their governing legislation, provisions for periodic increases to the Maximum Compensable Yearly Salary (MCYS) while others have various other methods for addressing this issue.

Workers' Compensation in British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick and the Yukon include legislative provision for the automatic escalation of the MCYS. In Alberta, Nova Scotia, Newfoundland and Prince Edward Island changes occur with the approval of the Lieutenant Governor in Council; and, with the approval of the Commissioner, in the North West Territories.

TEMPORARY TOTAL DISABILITY
MAXIMUM/MINIMUM COMPENSATION RATES - 1989

JURISDICTION	MAXIMUM WEEKLY COMPENSATION	MINIMUM WEEKLY COMPENSATION	PERIODIC ADJUSTMENT FOR A CONTINUING CLAIM
British Columbia	$606.98	$223.84*	Semi-Annually (Subject to Maximum)
Alberta	506.90	168.00**	
Saskatchewan	581.82 (With 2 dependents)	207.46*	Annually
Manitoba	490.39	173.32*	Annually
Ontario	452.16	254.03***	Annually
Quebec	429.98	158.88*	
New Brunswick	424.53	218.15+	Annually
Nova Scotia	418.27	135.00*	
Newfoundland	539.22	200.00**	Annually
North West Territories	528.29	253.84++	
Yukon	575.33	149.00*	Annually
PRINCE EDWARD ISLAND	331.73	60.00*	

* Or 100% of earnings if less.
** Or 100% of net earnings if less.
*** Or net average earnings if less.
+ 50% of N.B. Industrial Aggregate Earnings.
++ 2.75% of YMIR Monthly.

MONTHLY PERMANENT DISABILITY AND ESCALATION BENEFITS - 1989

JURISDICTION	MAXIMUM	MINIMUM	ESCALATION
British Columbia	$2,637.50	$ 970.06	Semi-Annual (C.P.I.)
Alberta	2,202.60	730.00	*Not Automatic
Saskatchewan	2,521.20 (With 2 dependents)	898.99	Annually (C.P.I.)
Manitoba	2,125.00	751.00	*Not Automatic
Ontario	1,987.09	1,060.16	Annually (C.P.I.)
Quebec	A lump sum indemnity is payable for physical injuries--maximum $58,831 and minimum $29,416 based on a sliding scale on the basis of age.		
New Brunswick	An earnings loss system was adopted on January 1, 1982, together with compensation at 90% of net average earnings. Continuing earnings loss benefits are subject to an annual adjustment.		
Nova Scotia	1,812.50	585.00	Annually (C.P.I.)
Newfoundland	Effective January 1, 1984, a wage loss sys tem has been adopted providing compensation on the basis of 90% of net average earnings. For permanent impairment or disfigurement, a lump sum is payable based on a rating schedule--minimum award is $1,000. and the maximum is $45,500.		
North West Territories	Lifetime provisions are awarded for degrees of medical impairment from 10% to 100% of total. Premiums are based on a maximum of 90% of net earnings.*		
Yukon	A wage loss system was introduced effective January 1, 1983. Where permanent disability is determined, a lump sum for impairment is paid, regardless of wage loss, from a minimum of $1,000. to a maximum of $40,000. Continuing compensation may also be paid based on wage loss, at 75% of lost wages with the maximum of $2,499.94 and a minimum of $645.66 per month. Annual adjustments based on C.P.I. for all continuing wage loss compensation.		

PRINCE EDWARD ISLAND	$1,436.40	$ 260.00**	Not Automatic*

* Supplementary pension increases from time to time.
** Or 100% of earnings if less.

FATALS BENEFITS OTHER THAN PENSIONS

JURISDICTION	IMMEDIATE LUMP SUM	FUNERAL COST	TRANSPORTATION BODY	LUMP SUM PAYABLE ON REMARRIAGE
B.C.	$1,492.38	$1,790.72 +$596.91 for incidentals.	$596.91	2-yr pension. Total spouse's benefit not less than $29,846.25
Alberta	$1,200	$1,350	$450 max.	For pre-1982 cases only, otherwise pension continues.
Saskatchewan	$3,500	Inc. in lump sum.	Actual costs in Canada	Benefits continue irrespective of remarriage for a min. of 5 years for accidents occurring on & after 1/9/85.
Manitoba	$1,305	$1,500 max	Necessary costs.	$3,600.
Ontario	$23,078.28 (min.) to $69,234.85 (max.)	$1,730.87	Necessary costs.	Pension continues after remarriage.

Quebec	$1,177	$1,764	Prescribed by law. Costs.	Not applicable
New Brunswick	Nil	5% of N.B. Ind. Aggr. Earnings. No offset. 1988-$1,095	Necessary expenses within Canada.	One year's spouse's pension in lump sum.
P.E.I.	$500	$900 max.	$300 max.	12 X 450 = $5,400.
Nova Scotia	$1,000	$750 max.	$300 max.	$3,278.
Newfoundland & Labrador	$26,000 (min.) to $77,974.65	$1,500 max.	Necessary costs.	The lesser of aggr. benefits otherwise payable to spouse for 1 year from date of marriage.
Northwest Territories	4% of YMIR* $1,600.	4% of YMIR* $1,600.	Necessary costs within NWT.	$13,200.
Yukon	$1,585.	$1,817	Necessary costs.	Pension continues after remarriage.

* Yearly Maximum Insurable Remuneration

SPECIAL ALLOWANCE FOR HANDICAPPED - 1989

JURISDICTION	PERSONAL CARE, ATTENDANCE OR HELPLESSNESS ALLOWANCES IN PERMANENT TOTAL DISABILITY CASES	CLOTHING ALLOWANCES FOR WEAR AND TEAR DUE TO ARTIFICIAL APPLIANCES IN PERMANENT DISABILITY CASES
British Columbia	From $270 to $1,087.50 per month. Five categories.	Upper limb $173 per annum. Lower limb or leg brace $346 per annum.
Alberta	From $426 to $1,500 monthly. Based on AHSC rates for nursing home care. Independence allowance of $125 per month.	Upper limb $150 per annum. Lower limb $300 per annum.
Saskatchewan	From $240 to $1,211 per month. Four categories. Annual CPI adj. Eff. 1/1/85, additional independence allowance up to 10% of max. lump sum in effect.	Upper limb $161 per annum or $13.41 per month. Lower limb $356 per annum or $29.66/month. $2,260/year.
Manitoba	From $140 min. to $980 max. per month.	Upper limb $166 per annum. Lower limb $333 per annum. If due to orthotic devices, $333 per annum.
Ontario	From $170.93 to $1,196.51 per month. Seven categories.	Upper limb $212.32 per annum. Lower limb permanent leg brace or back brace for permanent back disability $424.65/year.

JURISDICTION	PERSONAL CARE, ATTENDANCE OR HELPLESSNESS ALLOWANCES IN PERMANENT TOTAL DISABILITY CASES	CLOTHING ALLOWANCES FOR WEAR AND TEAR DUE TO ARTIFICIAL APPLIANCES IN PERMANENT DISABILITY CASES
Quebec	From $236 to $941 per month depending on severity.	Max. $353 per annum by regulation.
New Brunswick	From $120 to $400 per month depending on severity.	Basic rate of $214, up to max. of $428 per year.
Prince Edward Island	No fixed amount.	No fixed amount.
Nova Scotia	$300/mth max. allowance; Board may provide necessary treatment service/attendance.	Max. $350 per year.
Newfoundland & Labrador	From $100 to $1,250/mth. Five levels.	Provided for. No max. stipulated in Act.
Northwest Territories	Board pays for necessary care. No set figures but would not exceed nursing home care allowance.	Max. $100 per year.
Yukon Territory	Five categories, from $7 to $24/day. Independence allowance of $100 per annum.	Upper prosthesis $149 per annum max. Lower prosthesis $303 per annum maximum.

DEPENDENTS' BENEFITS

The benefits paid to surviving dependents of workers who have lost their lives due to workplace accidents vary widely from jurisdiction to jurisdiction.

Appendix "E" illustrates some of the pertinent data related to Dependents' Benefits which are provided by the various jurisdictions.

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PUBLIC HEARINGS

The Committee was impressed with the depth of the recommendations made to it for its' consideration; and, we were also most impressed with the sincerity and deep feelings which underlined various complaints and concerns relating to the specific operations of the Workers' Compensation Board, as expressed to us by those injured worker clients of the Workers' Compensation Board, who chose to appear before the Committee.

Upon receiving the material presented to it, both written and oral, the Committee is aware that the number of complaints and concerns which it has received, represents only a small portion of the claims which are processed through the system annually.

The overview of presenters' comments, which follows, summarizes many of the major concerns as were expressed by the individuals and organizations who made presentations to the Committee:

- The Act, as written, is too difficult for the ordinary person to interpret and understand. The legislation should be written in simpler, easier to understand language.

- There should be no exclusions of workers from coverage of the Act. The legislation should cover all workers.

- Judicial review of Board decisions should be only available where such decisions are "ultra vires." The intrusion of common law is a violation of the original principles of the system.

- The creation of "worker's advocate" is a must. These worker advisors must be completely independent of the Workers' Compensation Board and safe from political interference in order to provide fair and impartial advice to injured workers.

- An independent appeal board should be established immediately. That appeals procedures be kept simple and nonlitigious in nature.

- That appeal mechanisms apply the legislation and not expand it with interpretations inconsistent with the intent of the legislation. Appeals should be timely, fair and democratic.

- Benefits should be paid without fault and benefits should not exceed the actual wage loss.

- Scale of compensation is inadequate. Benefit ceilings should be increased and benefits received should be based upon the Worker's ability to earn prior to the injury.

- Without knowledge of Workers' Compensation Board benefits, I paid for my medication through Blue Cross for approximately one year as I was not informed that Workers' Compensation benefits paid for this service. Personal Care Allowances should be spelled out.

- An additional amount of compensation should be considered as recognition of ongoing pain and suffering and loss of enjoyment of life experienced by the (injured) worker.
- Suggest a maximum amount (annual fixed ceiling of maximum salary - 1989 = $23,000.) equivalent to the average of the maximum amounts set by the other 11 Workers' Compensation Systems in Canada. At the current time, their average starts at just over $37,500.
- My cheque stayed the same, so much for inflation and the cost of living. A method of indexing disability and survivors benefits be implemented.
- Appointments to the Board (W.C.B.) should be taken out of the political arena. Appointments to the Board be made after consultation with all employer organizations.
- (There should be, by the parties) consultation and participation with the Board in: (1) Policy and financial matters; (2) establishment of accident prevention measures; (3) rehabilitation of injured workers and (4) proper claims management.
- Board (W.C.B.) should be subject to bi-partite review every four years on all aspects of their operation.
- (There should be) a solid set of criteria for claims, applied in a consistent manner. Consistency in claims decisions.
- Claims (should be) dealt with as quickly as possible. (The) individual is allowed to degenerate rather than return to work.
- Information seminars must be developed and delivered by the Board (W.C.B.) which will advise all parties concerned of the implications of a claim.
- A system be developed whereby all employers automatically receive a detailed cost statement setting out their claims experiences, the claims experiences of their class, and the claims experience of the Board.
- Workers' compensation claim forms need to be readily available, easy to understand and both the worker and the employer should see a copy of each other's report.
- That the reporting forms used by W.C.B. be revised to allow for witnesses' statements.
- There are not enough classification categories. Rates should be lower for office workers as they are under much less risk.

- Sufficient funding for fair and adequate compensation must be a basic commitment of Workers' Compensation Boards. Workers' Compensation Boards in Canada must set assessment rates to fully pre-fund all of the costs of compensation. Failure to do so undermines the integrity of the historic compromise on which the compensation system is based. Under-funding, experience rating, and other gimmicks used to undermine fair compensation must end if the system is to remain viable.

- Work related injury or disease, clear definitions have to be developed and placed in the Workers' Compensation Act.

- The prime concern of health and safety should always be the prevention of injury and disease by engineering controls "at the source." Where medical removal is an option or a requirement, it should be fully compensated.

- (I was) denied permission to consult another doctor. Referrals not immediate enough. Difficulty in (obtaining Workers' Compensation Board) referrals to specialist. Workers' Compensation Board placed too much (credibility) on diagnosis of one doctor. (One doctor) said to go to work, 2 other doctors said no, Workers' Compensation Board cut me off.

- The Workers' Compensation Board should immediately hire a medical doctor (on staff).

- Medical profession should be educated and informed with respect to all facets of the compensation system.

- In cases of conflicting medical opinions, the worker should receive the benefit of the doubt.

- People who are drawing benefits should be informed by the Workers' Compensation Board of the amount of their benefits and told how the Board arrived at their decisions and answer any questions concerning the claim and what medical treatment they (injured worker) are eligible for.

- One of the most important aspects of the Workers' Compensation system is education. The education process applies to everyone in the system, workers, employers, medical practitioners and including staff of the Workers' Compensation Board.

- The yellow, information for workers book, handed out to claimants is not accurate. I am not well informed of the policies and practices of the Workers' Compensation Board.

- The Workers' Compensation Board should compile and distribute a booklet outlining its policies and the interpretation of those policies.

- The Workers' Compensation Board annual report should be drastically revised. It should include an accumulated analysis of the monthly reports and a more detailed breakdown of the types and duration of claims.

- Injured workers should have full access to their Workers'Compensation Board files. Employers should have access to their (injured employees) claim files.

- Assessment payments should be remitted on a quarterly or monthly basis.

- Feel that the P.E.I. Board should have an interjurisdictional agreement with other provinces so that they administer claims for people like me, who live here but work and are injured out of the Province.

- Employer reporting forms should be re-drafted. The new form should require a preliminary investigation and explanation of findings. It should also request the employer to outline what measures, if any, have been taken in the area of corrective actions.

- (The) "meat chart" method of determining compensation must be eliminated and each claim must be dealt with and considered on its own merit for wage loss replacement. The objective of workers compensation should be to provide a wage loss insurance plan with the aim of returning workers to the workplace as readily as possible.

- Permanent partial disability pensions, where the worker is not totally disabled, should be abolished and be replaced with a "dual award" system.

- More recognition be given to employers by rating them on their safety performance and number of claims which are made against the compensation scheme by their employees.

- Limit the percentage of merit to provide protection from excessive assessment.

- There should be an increased emphasis on vocational rehabilitation. Initiate and improve rehabilitation programs through early evaluation, careful planning, and realistic programs.

- Employers should be required to provide, where possible, alternate forms of light employment, utilizing a cost-sharing agreement with the Board.

- Maintain the accident fund by bringing in a realistic vocational rehabilitation program and educating the employer in ergonomically improving working conditions, eliminating workplace hazards, providing safe working conditions.

- Present staff (of the Workers' Compensation Board) should be trained in reporting techniques and interviewing procedures.

- The lack of accountability in supervisors, improper work assignments and delegation is not in concert with accepted management practices (at the Workers' Compensation Board).

- Work related stress (effects of) should be accepted as compensable diseases.

- The time lapse between the date of the injury and the receipt of compensation is often such that the injured worker suffers a serious irrevocable economic hardship.

- Provision to provide for the option of providing a private staff insurance plan (instead of Workers' Compensation Board coverage).

OBJECTIVE OF THE REPORT

In accordance with the mandate provided to the Ministerial Action Committee by Government, the Committee undertook a comprehensive review of the existing *Workers' Compensation Act* and its Regulations; the policies and practices of the Worker's Compensation Board; and the structure of the Worker's Compensation Board and from the findings and determinations of the Committee make recommendations to Government and the Board, which will provide for a more effective, and fair compensation system when they are adopted into law and practice.

RECOMMENDATIONS

After careful consideration of all that information which was provided to us by the presenters and following our perusal of Workers' Compensation legislation of the other jurisdictions; reviewing the history of the evolution of Workers' Compensation in Canada; review of recent studies and reviews of Workers' Compensation systems in other provinces; and, after considerable discussion and debate, the Committee is prepared to make its' recommendations.

We believe that effective deliberations have been achieved in this review.

The Chapters which follow incorporate the specific recommendations of the Committee, as they relate to the Mandate which was provided us.

We have provided, in capsule form, an explanation of our rationale for the majority of recommendations which we have made herein.

CHAPTER ONE encompasses those recommendations of the Committee as they relate to the legislation.

CHAPTER TWO encompasses those recommendations of the Committee as they relate to the policies and practices of the Workers' Compensation Board.

CHAPTER THREE encompasses those recommendations of the Committee as they relate to the structure of the Workers' Compensation Board.

CHAPTER FOUR encompasses those recommendations of a general nature which the Committee deems appropriate to it's mandate and critical to the ultimate acceptability or, indeed, the rejection of the many and varied proposals which we have recommended.

CHAPTER ONE

CHAPTER W-7

WORKERS' COMPENSATION ACT

LEGISLATIVE RECOMMENDATIONS

CHAPTER ONE

LEGISLATIVE RECOMMENDATIONS

As per the mandate provided to the Committee by Government, the Committee undertook a comprehensive analysis of the existing *Workers' Compensation Act* and its Regulations.

In making its recommendations, the Committee has taken into consideration the many recommendations which were proposed to it by the various individuals and organizations as listed in Appendix "C" and Appendix "D", attached hereto; as well, the Committee reviewed the governing legislation in other jurisdictions; reviewed the recent reports and findings of review committees into workers' compensation in other jurisdictions; and reviewed leading commentaries, papers and legal texts on the subject of workers' compensation in Canada.

The Committee was surprised by the number of recommendations which were made to it with regard to the sometimes archaic and most times, difficult to understand language of the Act, which is contributing to the difficulty of individuals in interpreting and understanding the intricacies of the legislation.

As one presenter put it. . . ."In line with the desire to inform participants and the general public about the Workers' Compensation system, we should ensure that the wording of the Act itself is as simple and straight-forward as possible. . . . in other words, that it be 'user friendly.' In fact, the two previous reviews of the Act. . . in 1976-77 and in 1982-84. . . suggested the same thing."

"The 1982-84 Committee also referred to an undertaking in Newfoundland in which that Province's Act was revised through the use of language that was much easier for the average person to understand. The Committee found it to be 'quite an improvement over the old Newfoundland Act and the present P.E.I. *Workers' Compensation Act*' and recommended that the local Act be revised in a similar fashion."

The Workers' Compensation Act, which is the very basis for the plan's existence and which establishes the rights, duties, and the obligations of employers, workers, and the Board itself, is in need of a wholesale revision.

The Act, originally drafted in 1949, utilizes language that is not in common use in these days and times, e.g. Section 1(v) "teams", "drays" and "carriages", etc. As well, the Act has been amended on numerous occasions in an ad hoc fashion, with little thought given, it appears, to the affect of such amendments on other sections, which has resulted in creating apparent contradictions between certain sections e.g. Section 6(4) (a), 6(3) and 18 (1) as they refer to the waiting period. For these various reasons, the Committee's first recommendation is to have the Act entirely re-written.

RECOMMENDATION L-1

THAT THE *WORKERS' COMPENSATION ACT*, CHAPTER W-7, BE COMPLETELY RE-WRITTEN. WE RECOMMEND THAT AT THE TIME THE ACT IS RE-WRITTEN THAT SPECIAL REGARD BE PAID TO THE REMOVAL OR REVISION OF OUT DATED LANGUAGE AND CONFLICTING SECTIONS; AND, THAT THE ACT BE DRAFTED IN THE SIMPLEST AND MOST COMPREHENSIBLE LANGUAGE POSSIBLE.

DEFINITIONS

A number of presenters made reference to the definitions section, Section 1, of the Act and proposed that the section is incomplete; and, in specific cases, existing definitions need to be improved upon.

RECOMMENDATION L-2

SECTION 1(A) "ACCIDENT" AND "INJURY" INCLUDES, BUT IS NOT LIMITED TO,

(i) A WILLFUL AND INTENTIONAL ACT(S) NOT BEING THE ACT(S) OF THE WORKER,

(ii) AN UNFORESEEN OR UNPLANNED EVENT OCCASIONED BY A PHYSICAL OR NATURAL CAUSE,

(iii) DISABLEMENT ARISING OUT OF OR IN THE COURSE OF EMPLOYMENT OF A WORKER, AND

(iv) INCLUDES AN INDUSTRIAL DISEASE.

COMMON LAW SPOUSE

While deliberating any amendments to Section 39 (Compensation to common law spouse) of the Act, the Committee gave considerable thought to a more appropriate definition and finally agreed that the definition in the *Workers' Compensation Act* should more closely resemble the definition as set out in the regulations to the *Welfare Assistance Act*, Chapter W-4 for "Spouse."

RECOMMENDATION L-3

SECTION 1(e) "COMMON LAW SPOUSE" SHOULD BE DELETED FROM THE ACT AND A DEFINITION FOR "SPOUSE" SUBSTITUTED THEREFORE:

SECTION 1(?) "SPOUSE" INCLUDES THE HUSBAND OR WIFE OF A WORKER AND INCLUDES A PERSON WHO, ALTHOUGH NOT LEGALLY MARRIED TO ANOTHER PERSON LIVES WITH THAT PERSON AS IF THEY WERE HUSBAND AND WIFE.

INDUSTRIAL DISEASE

The existing definition is seen to be too narrow and restrictive. With the rapid changes being experienced in today's workplaces as they relate to technological advances and the use of ever increasing numbers of materials, gases and chemicals which have had an adverse effect on the health and safety of workers, or which have the potential for such an adverse effect, the Committee is convinced that a new definition to the Act is appropriate and necessary.

Surprisingly there exist presently two definitions within the present day legislation, i.e. Section 1(j) and Regulation 7. The Committee is recommending a refined version of Regulation 7. as a new definition for the Act, in addition to a revised schedule of Industrial Diseases, as well as an Industrial Disease Panel.

RECOMMENDATION L-4

SECTION 1(j) "INDUSTRIAL DISEASE" MEANS ANY DISEASE PECULIAR TO OR CHARACTERISTIC OF A PARTICULAR INDUSTRIAL PROCESS, TRADE OR OCCUPATION AND INCLUDES, BUT IS NOT LIMITED TO, THE DISEASES LISTED IN THE SCHEDULE.

SECTION 1(0) - MEDICAL AID

The Committee is convinced that the existing definition of medical aid is limiting and does not provide the necessary flexibility, to empower the Board to be able to provide all of the *necessary* medical services, devices, accessories and drugs in rehabilitating the injured worker and ensuring a swift return to the workplace.

Board practices presently, do go beyond the existing definition in providing the necessary medical aid in treating an injured worker and the Committee feels that the definition should be amended so as to empower the Board to continue its practices of providing medical aid beyond the intent of the existing definition.

RECOMMENDATION L-5 - MEDICAL AID

SECTION 1(0) "MEDICAL AID" INCLUDES MEDICAL AND OTHER SERVICES PROVIDED BY A MEDICAL PRACTITIONER OR RECOGNIZED PROFESSIONAL WHILE PRACTICING AS SUCH, NURSING SERVICES, HOSPITAL SERVICES, DRUGS, DRESSINGS, X-RAY TREATMENT, SPECIAL TREATMENT, TRANSPORTATION AND SUCH OTHER SERVICES, DEVICES, APPLIANCES AND SUCH OTHER THINGS AS THE BOARD MAY AUTHORIZE TO PROVIDE IN THE MEDICAL REHABILITATION OF THE INJURED WORKER.

RECOMMENDATION L-6

SECTION 1(p) "MEMBER OF THE FAMILY" MEANS SPOUSE, FATHER, MOTHER, GRANDPARENT, STEP-PARENT, CHILD, GRANDCHILD, STEP-CHILD, BROTHER, SISTER, HALF-BROTHER, HALF-SISTER, AND A PERSON WHO STOOD IN LOCO PARENTIS TO THE WORKER OR TO WHOM THE WORKER STOOD IN LOCO PARENTIS.

OUTWORKER

The definition needs to be improved upon to recognize the fact that a considerable amount of "piece work", "at home work", or "out work" is being performed in these times, which is considered of a service nature and may not, necessarily, involve articles or materials as envisaged by Section 1(r) presently. An outworker may also provide bookkeeping, clerical, secretarial, computer, or attendant work or services, etc. and such should be clearly understood in this definition.

RECOMMENDATION L-7

"OUTWORKER" MEANS A PERSON WHO PROVIDES HIS SERVICES OR WORK, OR A PERSON TO WHOM ARTICLES OR MATERIALS ARE GIVEN OUT TO BE MADE UP, CLEANED, WASHED, ALTERED, ORNAMENTED, FINISHED, REPAIRED OR ADAPTED FOR SALE IN HIS OWN HOME OR ON PREMISES NOT UNDER THE CONTROL OR MANAGEMENT OF THE PERSON WHO GAVE OUT THE ARTICLES OR MATERIALS OR WORK ASSIGNMENTS.

REGULATIONS

While it appears that the Board, via Section 1(t), is enabled to make regulations by its own volition and as it may deem appropriate; in fact, the Board cannot put regulations into law without first obtaining the approval of the Lieutenant Governor in Council.

Therefore it is felt by the Committee that it would be more appropriate and more in keeping with traditional powers, that the Act, in fact, state that the regulatory making authority is indeed the Lieutenant Governor in Council.

RECOMMENDATION L-8

> SECTION 1(t) "REGULATIONS" MEANS REGULATIONS MADE UNDER AUTHORITY OF THIS ACT.

WORKER

There is a tendency in the Act toward being very specific in regard to certain occupations, which tend to be overly restrictive, outdated or unwarranted in today's world. Section 1(x) is one of these areas of concern to the Committee. The reference of positions required in the operation of railway trains is obviously outdated; but, nevertheless, unnecessary in the general context of the definition. As well, because the Committee is prepared to recommend a universal plan, the restriction of excluding specific occupations in the definition would be out of step with that recommendation. In addition, as of 1987, such employers as receivers and liquidators have been covered by this Act. Therefore the reference in Section 1(x) (ii) appears to be in conflict as it presently exists and, at the least, is confusing and should therefore be removed.

RECOMMENDATION L-9

> SECTION 1(x): DELETE THE WORDS "FOR POSITIONS REQUIRED IN THE OPERATION OF RAILWAY TRAINS" IN SECTION 1(x)(i). AS WELL, DELETE THE WORDS "BUT DOES NOT INCLUDE A RECEIVER, LIQUIDATOR OR OTHER PERSON APPOINTED BY A COURT OR A JUDGE WITH POWER TO MANAGE OR CARRY ON THE BUSINESS OF A COMPANY FOR WINDING UP OR OTHER PURPOSES;" IN SECTION 1(x)(ii).

NEW DEFINITIONS

Throughout its review of the legislation and as a result of explanations received, with regard to interpretation of the legislation in specific areas, and upon being apprised of Board practice in the application of the legislation in specific references, the Committee is convinced that there exists a critical need for additional definitions in the Act.

CONSUMER PRICE INDEX

As the Committee is recommending that certain benefits should be indexed to the cost of living on an annual basis and that such indexing should be based on the consumer price index for Charlottetown and Summerside, as published by Statistics Canada, the Committee feels it appropriate to recommend a definition be included in the Act.

RECOMMENDATION L-10

SECTION 1(?) "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX (C.P.I.) FOR CHARLOTTETOWN/SUMMERSIDE PUBLISHED BY STATISTICS CANADA UNDER THE STATISTICS ACT (CANADA).

APPEAL BOARD

A large number of presenters made reference to the need for an independent appeal body which would be solely responsible for hearing and deciding appeals from decisions of the administration of the Workers' Compensation Board.

The following are a few of the comments received by the Committee with respect to appeals:

> "An appeal procedure (should) be established which would include an independent appeal board whose decision would be binding."
>
> "Appeals should be timely, fair and democratic. The appeal system should be independent of the primary adjudication process and comprised only of the parties of direct interest."
>
> "Knowledgeable and well qualified individuals who have a demonstrated expertise in Workers' Compensation be appointed to the final appeals level."
>
> "The appeals' procedure be kept simple and nonlitigious in nature and be open to both parties."

The Committee has given serious consideration to recommending that an appropriate appeals body and process be incorporated into the Act. Therefore, it is felt appropriate to provide for a definition in Section 1.

RECOMMENDATION L-11

SECTION 1(?) "APPEAL BOARD" MEANS THE WORKERS' COMPENSATION APPEAL BOARD ESTABLISHED UNDER SECTION (?)

PERSONAL COMFORT ALLOWANCE

Throughout the hearing and embodied in the written submissions, the Committee kept hearing, or reading, about such concerns as "personal care allowance," "clothing allowance," "quality of life," and "loss of enjoyment of life," as legitimate concerns which should be recognized and compensated by Workers' Compensation.

Some specific recommendations and comments, as received by the Committee, are illustrated, in brief, as follows:

> "Personal care allowances should be spelled out."
>
> "A clothing allowance should be implemented for those (injured workers) utilizing artificial appliances."
>
> "When you are disabled it costs you more money to live if you are not able to do things around your home like cutting grass, shoveling snow, painting and all (those) other things."
>
> "Workers should be able to file an additional claim outlining relevant details as to the loss of enjoyment of life."
>
> "Workers' Compensation Board should establish an appropriate annual amount to recognize the loss of enjoyment of life suffered by the spouse and children."

Our research indicates that there is no general rule which requires that an injured worker be reimbursed for all expenses resulting from a compensable injury; nor, any allowance to cover all of the future costs which are peripheral to the disablement.

Section 18 of the Act establishes payment for medical aid and certain appliances and Section 18(16) lends assistance to the injured worker in a financial way for unspecified purposes, at the discretion of the Board.

Throughout the country and indeed in P.E.I., it has been the practice to compensate injured workers in a number of ways for costs incurred which are related to the disablement, e.g. costs incurred in attending at the Board office or a place of medical examination; a subsistence allowance for injured workers who may be required to live away from home for medical cure or rehabilitation; attendance allowance for the cost of personal assistance; clothing allowances where the nature of the injury requires appliances which create unusual wear and tear on clothing; educational program costs related to vocational rehabilitation and so on. These allowances are paid in addition to any compensation awards that may be applicable.

RECOMMENDATION L-12

> SECTION 1(?) "PERSONAL COMFORT ALLOWANCE" MEANS AN ALLOWANCE WHICH IS TO BE USED FOR THE PAYMENT OF ITEMS OR SERVICES REQUIRED FOR PERSONAL CARE AND THE MAINTENANCE OF QUALITY OF LIFE.

SUB-CONTRACTOR

In this day and age where so much work is being sub-contracted to third parties in various business undertakings and projects, the Committee feels it appropriate to recommend that a definition for same be included in the Act.

RECOMMENDATION L-13

SECTION 1(?) "SUB-CONTRACTOR" MEANS A PERSON OR AN INDUSTRY CONTRACTING TO PERFORM PART OR ALL OF ANOTHER PERSONS OR INDUSTRY'S CONTRACT; OR, TO PROVIDE ALL OR A SPECIFIED PART OF THE WORK OR MATERIALS REQUIRED BY ANOTHER.

REMUNERATION/EARNINGS

The terms remuneration and earnings are used throughout the Act in reference to salary, wages, allowance, benefit, pension, gratuities, etc., and yet there is no specific definition existing in the Act.

RECOMMENDATION L-14

SECTION 1(?) "EARNINGS" AND "REMUNERATION" INCLUDES SALARY, WAGES, COMMISSIONS, GRATUITIES, EARNINGS FOR OVERTIME, PIECE WORK, CONTRACT WORK, BONUSES, ALLOWANCES, BOARD AND LODGING CAPABLE OF BEING ESTIMATED IN TERMS OF MONEY, CREDITS AND ANY SUBSTITUTE FOR MONEY WHICH ARE PROVIDED WHOLLY AT THE EXPENSE OF THE EMPLOYER.

IMPAIRMENT AND DISABLEMENT

The terms "impairment" and "disablement" are used throughout the Act with particular intent and yet there is no specific definition for either of these terms presently in the definitions section.

"Impairment", as a term within the Act, is used in the economic sense, i.e. to indicate a worker's loss of earning power or a worker's diminished ability to earn at his/her prior level of wages, resulting from a work-related injury. As an example of this usage, see Section 43(3) of the Act.

On the other hand "disablement", as a term within the Act, is used in the physical sense, i.e. to indicate physical damage or loss resulting from a work-related injury. As an example of this usage, see Section 44 of the Act.

RECOMMENDATION L-15

SECTION 1(?) "IMPAIRMENT" MEANS A WORKER'S LOSS OF EARNING POWER RESULTING FROM AN ACCIDENT.

RECOMMENDATION L-16

SECTION 1(?) "DISABLEMENT" MEANS PHYSICAL OR PSYCHOLOGICAL DAMAGE OR LOSS RESULTING FROM AN ACCIDENT.

MINISTER RESPONSIBLE

Section 34 of the Act requires that the Board make a report to the Minister of Labour. Prior to the election of the present government, this section required that the Board make a report to the Minister of Fisheries and Labour. Following the re-alignment of ministerial responsibilities by successive governments, it is possible that the minister responsible for Workers' Compensation may change. Such happenstance requires subsequent amendments to the Act.

The Committee recommends the following definition be incorporated into the Act to overcome the need for subsequent amendments in this regard.

RECOMMENDATION L-17

SECTION 1(?) "MINISTER" MEANS A MINISTER OF THE CROWN CHARGED BY THE LIEUTENANT GOVERNOR IN COUNCIL WITH THE RESPONSIBILITY OF REPORTING TO THE LEGISLATURE ON BEHALF OF THE BOARD.

RECOMMENDATION L-18

SECTION 1(?) "MUNICIPALITY" MEANS AN AREA INCORPORATED AS A TOWN OR COMMUNITY UNDER THE *MUNICIPALITIES ACT* R.S.P.E.I. 1988, CAP. M-13, AND INCLUDES THE CITY OF CHARLOTTETOWN AND THE TOWN OF SUMMERSIDE.

SECTION 2 - SCOPE OF THIS PART

The Committee has come to recognize that the question of who should be covered by Workers' Compensation legislation, is a question that is answered resoundingly, ***"ALL WORKERS"***, by the vast majority who have ventured to make their thoughts known in this regard.

Our research does indicate that, overwhelmingly, reports of other review committees have recommended that Workers' Compensation insurance should apply to all workers regardless of where they are employed or by whom they may be employed.

One of Meredith's Principles is that *"Compensation for work injuries and illness is a right, regardless of fault"*.

The two most recent reviews of P.E.I.'s Workers' Compensation legislation, 1977 (recommendation No. 2) and 1984 (Page 41, . 1), make particularly strong recommendations to include all workers in the legislation. The 1984 report does provide for a certain few and specific exceptions to coverage, e.g. newspaper carriers, taxi drivers, clergy, etc.

It appears, from our research, that, although excluded from coverage for many years, agriculture, is now involved within the compulsary coverage in most other jurisdictions.

The Manitoba report of 1987 makes comment with regard to the impact of Section 15 of the Charter (p. 342):

> "The various exclusions of certain classes of workers from Workers' Compensation coverage (for example - outworkers, farm labourers, babysitters, companions to the elderly, certain domestics, etc.) would seem to be a clear violation of s. 15 of the Charter. Certainly the protection of and benefit of Workers' Compensation law is being denied to certain employees solely on the basis of their employment function. Nor would s. 1 be of much avail, one suspects, since the purpose of such exclusions concern reasons of administrative expediency and, it would appear, enshrine negative social perceptions concerning the relative lack of worth of those performing the lowest paying, most manual areas of labour."

Over the years it has been the legislated practice in our province to exclude both the farming and fishing industries from the mandatory coverage of Workers' Compensation. The legislation does provide for the voluntary inclusion of individual employers as determined by the employer. Such a system fails to consider or recognize the desires or needs of the labourer, the very person to whom compensation insurance provides benefit and protection in cases of work related accident and disease.

Some 9,000 Island workers are employed in these two major industries throughout the year; and, only those workers who are employed by those employers who have voluntarily elected to place themselves within the coverage of Workers' Compensation, are protected in circumstances related to workplace accidents and contracted diseases.

Statistics related to farm accidents, from those jurisdictions which do compile such records, does indicate a significant rate of accidents among farm workers.

> "The accidental death rate on the farm is estimated to be 20% higher than the national average. The total number of fatalities is now higher for farming than for any other industry and follows only mining and construction in the accidental death rate per number of workers." (Canada Safety Council)

The farm labourer is faced with using various types and kinds of machinery which have been known to injure, maim, dismember and even take the lives of individuals who were employed in this industry. We have all heard the tragic stories related to tractor roll-overs, confrontations with power take-offs, augers, mowers, spreaders, etc..

> "In 1989, 31 people were killed on Ontario farms and all but eight died from family farm accidents. It is not clear whether that ratio could be applied to injuries." (The Financial Post, April 9, 1990)

In addition, the farming industry uses a variety of chemicals and pesticides in its' operations, each of which holds potential for harming the health and safety of those who handle them.

In its 1987 report, Workplace Pollution, the Law Reform Commission of Canada found industrial disease is a bigger killer than traumatic accidents but too little is known about hazardous substances.

It was only a few short summers ago when the local media were reporting significant numbers of incidents of farm workers coming into contact with dangerous chemicals and the resulting health problems which they encountered.

We are certain that no one needs convincing to the fact that the potential for harm to health and safety does exist in farming operations.

There is another large group of Island workers who are also not mandatorily included in the Workers' Compensation legislation. Some 3,800 Island workers are employed in the fishing industry and they, as well, face dangers to their health and safety which are inherent to this traditional industry. There exist many stories of tragedy, in Island history, as they relate to this particular industry.

It must be remembered and understood that it is not only the labourer or worker who benefits by Workers' Compensation coverage; indeed, society and the employer both benefit, as well.

Society benefits in that the medical costs associated with the rehabilitation of the injured worker are to be borne by the compensation system and not by the medicare system, which is a charge against the tax payer, generally. As well, the compensation system pays for any necessary vocational rehabilitation which saves the education system in a financial way. Also, the welfare system, which is supported by tax payers, is saved the cost of maintaining injured workers who are unable to provide for themselves and their families into the future.

As the Honorable William Ralph Meredith, C.J.O., commented in his final report:

> ". . . I believe, the true aim of a compensation law is to provide for the injured workman and his dependants and to prevent their becoming a charge upon their relatives or friends, or upon the community at large." (Page 5, Appendix "F".)

The employer benefits by virtue of being protected from the significant costs associated with the legal processes of law suits and resulting awards.

In addition, the Committee finds offensive the present practice of providing for voluntary inclusion by the decision of an employer. As was stated by one member of the Committee, "The labourer is at the mercy of the decision taken by the employer in such circumstances."

The Committee is convinced that all workers, regardless of the nature of their employment or regardless of who their employer might be or regardless of the number of workers employed by any employer, should enjoy the benefit of Workers' Compensation insurance.

RECOMMENDATION L-19

SECTION 2(1): ALL WORKERS WHO ARE WORKING FOR AN EMPLOYER FOR REMUNERATION AND WHO ARE SUBJECT TO PAY STATUTORY DEDUCTIONS (e.g. INCOME TAX, C.P.P., U.I.C.) SHALL BE COVERED BY WORKERS' COMPENSATION INSURANCE AND THE EMPLOYER SHALL BE ASSESSED ACCORDINGLY.

SECTION 5

This section of the Act, although providing a benefit to a child employee in circumstances where the child is injured at a workplace, protects an employer from his illegal action of employing a child contrary to the provisions of another piece of provincial legislation. The employer is protected from a suit in the circumstances, simply because the Workers' Compensation legislation provides coverage to the injured child worker.

The Committee is convinced that employers who *knowingly* employ workers contrary to the provisions of provincial legislation should not escape entirely in the circumstances.

RECOMMENDATION L-20

(A) SECTION 5 BE RENUMBERED 5(1) AND THAT ADDITIONAL PROVINCIAL LEGISLATION WHICH PROHIBITS THE EMPLOYMENT OF UNDER AGE WORKERS, IN PARTICULAR CIRCUMSTANCES, BE REFERENCED HERE AS WELL; e.g. THE LIQUOR CONTROL ACT, THE CONSTRUCTION SAFETY ACT, ETC.

(B) (2) WHERE AN EMPLOYER EMPLOYS A WORKER IN CIRCUMSTANCES WHICH ARE IN VIOLATION OF ANY PROVINCIAL STATUTE AND THAT WORKER SUFFERS AN INJURY WHICH IS COMPENSABLE UNDER THIS ACT, THE BOARD SHALL BE EMPOWERED TO RECOVER FROM THE EMPLOYER ANY AND ALL COSTS, IN WHOLE OR IN PART, THAT HAVE BEEN PAID BY THE BOARD FROM THE ACCIDENT FUND ON BEHALF OF THE INJURED WORKER.

SECTION 6 - RIGHT TO COMPENSATION

The Committee has discovered apparent contradictory provisions between Sections 6(l)(a), and 6(3) and 18(l) as they relate to the commencement of compensation payments.

These apparent contradictions have resulted, we believe, from ad hoc amendments of the past, which were made without due consideration to any impact on other sections of the Act, by the Board, when they prepared their amendments from time to time.

RECOMMENDATION L-21

(A) SECTION 6(1)(a) - DELETE THE WORDS "FOUR DAYS" IN THE SIXTH LINE AND SUBSTITUTE "ONE DAY."

(B) SECTION 6(3) - SHALL REMAIN AS IS, WITH THE COMMENT THAT THE PROPER INTERPRETATION OF THIS SECTION IS THAT COMPENSATION IS PAYABLE FROM THE HOUR OF THE INJURY WHERE AN INJURED WORKER QUALIFIES FOR COMPENSATION.

(C) SECTION 18(1) - DELETE THE WORDS "FOUR DAYS" IN LINE THREE AND SUBSTITUTE "ONE DAY."

SECTION 6(1)(b)

The Committee is convinced that the original "Meredith principles" of the *Historic Compromise* are still sound principles and must remain the cornerstone of our compensation system.

One of these fundamental principles is that "compensation for work injuries and illness is a right, regardless of fault."

Of concern to the Committee is the matter of "who determines whether any injury is sufficiently serious to warrant compensation" and "what degree of injurious result, must occur, before a worker may be awarded compensation," to meet the requirement of this Section.

There is too much of a potential, we believe, for inconsistent decisions, as a result of human nature and human fallibility, that we are prepared, for all of the foregoing reasons, to recommend that this section be deleted.

RECOMMENDATION L-22

SECTION 6(1)(b) - THAT THIS SECTION BE REPEALED.

RECOMMENDATION L-23

SECTION 6(4) - FOR THE SAKE OF PROPER UNDERSTANDING, INTERPRETATION AND CONSISTENCY, DELETE THE WORD "REPORT" IN LINE FIVE AND SUBSTITUTE "NOTICE."

SECTION 6(6)

The Committee feels that this section is unnecessary in light of its Recommendation (L-2) on the definition for "accident" which incorporates natural causes.

RECOMMENDATION L-24

SECTION 6(6) - THAT THIS SECTION BE REPEALED.

RECOMMENDATION L-25

SECTION 9(1) - FOR THE SAKE OF PROPER UNDERSTANDING, INTERPRETATION AND CONSISTENCY, ADD THE WORD "OTHER" IN LINE FOUR BEFORE THE WORDS "PROVINCES, COUNTRY OR JURISDICTION"; AND, AGAIN IN LINE SEVEN BEFORE THE SAME FOUR WORDS.

SECTION 12 - LIMITATION OF ACTION

This Section deals with the limitation of action against the employers by injured workers. This Section precludes the taking of an action by a worker, or his employer, against a negligent party, if that negligent party is an employer or a worker in the course of his employment at the time of the incident which gave rise to the injury. This limitation of rights also extends to injuries that workers receive as a result of *motor vehicle accidents*, if the negligent party was an employer or a worker in the course of his or her employment at the time of the accident. Thus, motor vehicle insurance companies receive protection from actions and the responsibility to compensate injured workers is then moved on to the shoulders of the Workers' Compensation Board. Some other jurisdictions have enacted Sections to exclude motor vehicle accidents from the limitation of action against employers or their workers. Simply, as a matter of practicality, it does not seem reasonable for an automobile insurer to be enabled to avoid liability for an accident claim because the driver of the vehicle was, at the time of the accident, involved in the course of their employment; when the exact same accident happening outside of the course of employment results in the automobile insurer being liable to the injured worker. Therefore, we would suggest that the following be enacted as Section 12(3) of the Statute:

RECOMMENDATION L-26

SECTION 12(3) - SECTION 12(1) AND (2) SHALL NOT APPLY IF THE ACCIDENT REFERRED TO IN SECTION 11(1) HAPPENS TO THE WORKER AS A RESULT OF THE WORKER DRIVING OR BEING A PASSENGER IN A MOTOR VEHICLE AS DEFINED IN THE *HIGHWAY TRAFFIC ACT* THAT IS REGISTERED OR REQUIRED TO BE REGISTERED UNDER THAT ACT.

RECOMMENDATION L-27

SECTION 14 - FOR THE SAKE OF UNDERSTANDING AND CLARITY, DELETE THE WORD "COMPETENT" IN THE FIRST LINE AND SUBSTITUTE "A PERMISSIBLE ACT."

RECOMMENDATION L-28

SECTION 17 - FOR THE SAKE OF UNDERSTANDING AND CLARITY, DELETE THE WORDS "ADDUCE CONCLUSIVE" IN THE THIRD AND FOURTH LINES AND SUBSTITUTE "PROVIDE FACTS, EVIDENCE OR INSTANCES AS."

SECTION 18 MEDICAL AID

Section 18 has been dealt with in Recommendation L-15 with regard to contradictory provisions with earlier sections. There remains another concern to the Committee as it relates to antiquated wording.

RECOMMENDATION L-29

SECTION 18(1) - DELETE THE WORD "SPECTACLES" IN LINES SEVEN AND EIGHT AND SUBSTITUTE "CORRECTIVE LENSES."

SECTION 18(6)

After careful consideration the Committee is proposing that all reference to fines or penalties should be incorporated in Regulations and therefore we are recommending amendments to all such sections of the Act.

RECOMMENDATION L-30

SECTION 18(6) - NO EMPLOYER DIRECTLY OR INDIRECTLY SHALL COLLECT, OR RECEIVE, OR RETAIN FROM ANY WORKER ANY CONTRIBUTION TOWARDS THE EXPENSE OF MEDICAL AID, AND EVERY PERSON CONTRAVENING THIS PROVISION IS, FOR EVERY SUCH CONTRAVENTION, LIABLE TO A FINE AND IS ALSO LIABLE, UPON THE ORDER OF THE BOARD, TO REIMBURSE THE WORKER TREBLE THE AMOUNT OF ANY SUM SO COLLECTED, RECEIVED OR RETAINED.

SECTION 18(7)

The Committee is convinced that this section has the potential for creating great confusion in the minds of employers and workers alike; and, also has the potential for violating the principles of "no fault-employer paid" insurance which is a fundamental principle underlying the system.

For this and other reasons the Committee is convinced that this section must be repealed.

RECOMMENDATION L-31

SECTION 18(7) - THAT THIS SECTION BE REPEALED.

SECTION 18(9)

Since the proclamation of the Occupational Health and Safety Act, certain sections and requirements of the *Worker's Compensation Act* are no longer required, as the Board is no longer responsible for the enforcement side of health and safety at the workplace. This role now falls upon the Department of Labour and its Occupational Health and Safety Division and the *Occupational Health and Safety Act* and Regulations.

RECOMMENDATION L-32

SECTION 18(9) - THAT THIS SECTION BE REPEALED.

REHABILITATION

No other single issue attracted as much negative comment, nor raise such concern, as did the issue of rehabilitation.

The issue of rehabilitation, in the minds of injured workers, employer organizations and employee organizations is, we are convinced, of paramount importance.

A brief overview of selected comment from presenters follows:

"Workers injured on the job have to be treated and (provided) rehabilitation as quickly as possible so they can return to work as soon as possible following an injury."

"Initiate and improve rehabilitation programs through early evaluation, careful planning, and realistic programs."

"A comprehensive rehabilitation policy should be implemented." "Employers should be required to provide, where possible, alternate forms of light employment, utilizing a cost sharing agreement with the Board."

"There should be effective rehabilitation adequately funded to restore workers to their prior employment at their previous wage level."

"Rehabilitation should be one of the pillars of a proper workers' compensation system. In this vein, we believe that rehabilitation must receive increased emphasis in the province and that adequate staffing and other resources must be provided to coordinate this effort."

"The vocational rehabilitation be broadened to include economic assistance for reeducation, not just on-the job training."

"That employees with re-occurring or serious injuries receive an occupational assessment to determine their ability to return to their former job or to alternate employment."

"It is more cost beneficial from both a business and social point of view to do the very best job possible at rehabilitating injured workers and re-integrating them into the workplace.

"A central part of workers' compensation should be the legislated right of injured workers to vocational rehabilitation. Such rehabilitation should be meaningful, mutually planned and designed to maximize the independence of each injured worker and to return each injured worker as close as possible to her/his preinjury earnings and employment status."

The Prince Edward Island *Workers' Compensation Act* does not provide a great deal of specific direction in regard to the provision of medical and vocational rehabilitation. In fact Section 18(16) is the sum total of that direction.

Nevertheless, the Board, by virtue of Section 18(16), appears to have broad general powers to provide rehabilitation assistance as it deems appropriate and necessary.

On the whole matter of rehabilitation, the Committee would direct any interested parties to the text "Workers' Compensation in Canada," 2nd edition, T.G. Ison, for an interesting and informative overview of current law and practice related to workers' compensation in Canada, at Chapter 6.

The Committee stands convinced that rehabilitation is of critical importance in the scheme of workers compensation and as such the matter deserves special attention in legislation and in practice.

RECOMMENDATION L-33

(A) SECTION 18(16) - THAT THE SECTION BE SEPARATED FROM SECTION 18 AS IT PRESENTLY EXISTS AND BE SET OUT IN LEGISLATION AS A SEPARATE SECTION ON TO ITSELF.

(B) THAT THE WORD "MAY" IN THE THIRD LINE BE DELETED AND SUBSTITUTE "SHALL."

(C) THAT A PREAMBLE, AS FOLLOWS, BE INSERTED INTO THE NEW SECTION. SUCH, WE ARE AWARE, IS AN EXTRAORDINARY MEASURE AND NON-TRADITIONAL IN P.E.I.'S LEGISLATIVE STRUCTURING, HOWEVER, AS WE HAVE ASSERTED HEREIN, REHABILITATION IS A CRITICAL ISSUE AND DESERVES SPECIAL ATTENTION:

PREAMBLE:

REHABILITATION

(Medical and Vocational)

"A MAJOR PRINCIPLE OF THE COMPENSATION SYSTEM IS TO RESTORE INJURED WORKERS TO PRODUCTIVE EMPLOYMENT: WITH THE PRE-INJURY EMPLOYER WHERE POSSIBLE; AND, WITH SUITABLE ERGONOMIC JOB MODIFICATION WHERE FEASIBLE."

THE AIMS OF REHABILITATION SHALL BE:

- EARLY REFERRAL FROM CLAIM TO REHAB AND EARLY REACTIVATION OF INJURED WORKERS TO SUITABLE AND APPROPRIATE EMPLOYMENT;
- WORKERS' COMPENSATION MUST BE INNOVATIVE, PROACTIVE AND AGGRESSIVE IN ITS APPROACH TO PROVIDING A WIDE RANGE OF REHAB SERVICES TO WORKERS' COMPENSATION;
- TO PROMOTE THE INDEPENDENCE AND AUTONOMY OF EACH INJURED WORKER;
- TO TREAT ALL ASPECTS OF THE DISABILITY, E.G. PHYSICAL, MENTAL, VOCATIONAL AND ECONOMIC;
- TO ENSURE THAT THE WORKER IS PHYSICALLY AND PSYCHOLOGICALLY PREPARED TO WORK IN THE SPECIFIC EMPLOYMENT SITUATION FOR WHICH HE/SHE IS TO BE TRAINED;
- TO ENSURE THAT THE INJURED WORKER LEARNS SKILLS THAT ARE MARKETABLE AND COMPATIBLE WITH THE INDIVIDUAL WORKER AND WHICH WILL PROVIDE CONTINUED OPPORTUNITIES FOR EMPLOYMENT;
- REHABILITATION BASED ON A MUTUALLY ACCEPTABLE REHAB PLAN INVOLVING THE INJURED WORKER, THE WORKERS' COMPENSATION BOARD, THE WORKER'S MEDICAL DOCTOR, ETC., IN THE PLANNING;
- PROVIDE JOB REFERRAL SERVICE AT THE CONCLUSION OF THE REHABILITATION PROGRAM.

(D) FINALLY, THAT THE BOARD DEVELOP, AND PUBLISH A 'PROCEDURE MANUAL' THAT INCORPORATES THE CURRENT REHABILITATION POLICY, THE RELEVANT LEGISLATION, REHABILITATION SERVICES PROVIDED BY THE BOARD, THE PROCESS OF REHABILITATION, AND OTHER PERTINENT INFORMATION RELATED TO THE ISSUE.

THE WORKERS' COMPENSATION BOARD

Considerable comment was made to the Committee regarding the composition of the Board, the manner of appointing the Board, the nature of the employment of Board members, and the concern related to political influence in the appointments to the Board.

The Board, in accordance with Section 19 of the Act, is the administrator of the Act. The Board is also, inherently, the insurer and the adjudicating tribunal.

One of the Chief Justice Meredith's original principles was the independent administration of the Workers' Compensation Board, which implies that Boards should have an independent chair (not politically biased) along with equal representation by labour and business in determining the policies and direction of the Board.

Such a critically important role in such a critically important program to workers and employers alike, *DEMANDS* the appointment of individuals who are seen to be free of political bias, capable, qualified and fair minded.

One comment which was received by the Committee stands out in regard to this area of interest:

> "Thus, it is essential that the composition of the Board and the manner in which Board members are selected must demonstrate a rigorous adherence to the principles of fairness, objectivity and accountability."

"The governing body, although not involved in the day-to-day detail of the organization, should exercise real control in the definition of senior executive functions; the selection and assessment of the most senior officers; the development of policies and regulations; the approval of operating and capital budgets; the approval of major programs and expenditures; the investment of monies on hand; and, planning for the future." (Report and Recommendations, by the Advisary Committee on the Structures of the Workers' Compensation System of B.C., October, 1988, PP. 6-7.)

RECOMMENDATION L-34

(A) SECTION 19(1) - THIS ACT SHALL BE ADMINISTERED BY A BODY CORPORATE CALLED THE "WORKERS' COMPENSATION BOARD OF PRINCE EDWARD ISLAND" AND THERE SHALL BE ESTABLISHED A BOARD OF GOVERNORS RESPONSIBLE FOR THE ADMINISTRATION OF THE "WORKERS' COMPENSATION BOARD".

(B) SECTION 19(2) - THE BOARD OF GOVERNORS SHALL CONSIST OF THREE MEMBERS APPOINTED BY THE LIEUTENANT GOVERNOR IN COUNCIL AND NOTWITHSTANDING ANY PROVISION OF THE INTERPRETATION ACT, R.S.P.E.I. 1988, CAP. 1-8, BUT SUBJECT TO SUBSECTION (3), THE MEMBERS OF THE BOARD OF GOVERNORS SHALL HOLD OFFICE FOR A PERIOD OF FIVE YEARS AND ARE ELIGIBLE FOR REAPPOINTMENT SUBJECT TO REMOVAL FROM OFFICE BY THE LIEUTENANT GOVERNOR IN COUNCIL ONLY FOR JUST CAUSE.

(C) THAT THE BOARD OF GOVERNORS CONTINUE TO BE TRIPARTITE IN NATURE, WITH EQUAL REPRESENTATION FROM BUSINESS AND LABOUR, WITH AN ACCEPTABLE NEUTRAL CHAIR AND THAT THIS PRINCIPLE BE WRITTEN INTO THE LAW.

(D) THAT, AS A MATTER OF PRINCIPLE, GOVERNMENT CLOSELY CONSULT WITH THE RESPECTIVE INTEREST GROUPS ON THE APPOINTMENT OF THE CHAIR TO THE BOARD OF GOVERNORS.

(E) THAT, AS A MATTER OF PRINCIPLE, GOVERNMENT SEEK NOMINATIONS FROM THE RESPECTIVE INTEREST GROUPS WHEN SEEKING APPOINTMENTS TO THE GOVERNOR POSITION ON THE BOARD.

(F) THAT THE CHAIR'S POSITION CONTINUE AS A FULL-TIME POSITION *DURING THE PERIOD OF RE-ORGANIZATION,* AS RECOMMENDED LATER IN THIS REPORT, AND REVERT TO A PART-TIME POSITION FOLLOWING THE RE-ORGANIZATION.

(G) THAT THE GOVERNOR POSITIONS CONTINUE AS PART-TIME POSITIONS.

(H) THAT THE TERMS OF OFFICE OF ALL GOVERNORS, INCLUDING THE CHAIR, TO THE BOARD SHALL BE FOR FIVE YEARS AND THAT THEY SHOULD BE ELIGIBLE FOR RE-APPOINTMENT.

(I) THE TERMS OF OFFICE OF THE GOVERNORS SHALL NOT CO-INCIDE ONE WITH THE OTHER.

RECOMMENDATION L-35

NEW SECTION - DUTIES AND POWERS

(A) THE BOARD OF GOVERNORS SHALL ESTABLISH POLICIES AND PROGRAMS CONSISTENT WITH THE ACT AND REGULATIONS IN RELATION TO:

(i) COMPENSATION BENEFITS TO INJURED WORKERS AND DEPENDENTS,

(ii) REHABILITATION OF INJURED WORKERS,

(iii) ASSESSMENTS AND INVESTMENTS,

(iv) POLICIES SHALL ENSURE THE INTENT OF THE ACT IS BEING APPLIED TO PROVIDE SERVICES TO INJURED WORKERS AND DEPENDENTS AND SHALL PROMOTE ADEQUATE FUNDING FOR THE SERVICES THROUGH SOUND FINANCIAL ARRANGEMENT.

(B) THE BOARD OF GOVERNORS SHALL:

(i) CONSIDER AND APPROVE ANNUAL ADMINISTRATIVE AND OPERATING BUDGETS AND APPOINT AUDITORS TO AUDIT THE BOOKS AND ACCOUNTS OF THE BOARD,

(ii) ENACT BY-LAWS, POLICIES AND PRACTICES FOR THE GOOD CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD,

(iii) REVIEW THE ACT AND REGULATIONS AND RECOMMEND TO THE MINISTER SUCH CHANGES AS IT DEEMS ADVISABLE.

(C) THE BOARD OF GOVERNORS SHALL:

(i) INVEST, OR APPOINT AN INVESTMENT MANAGER WHO SHALL INVEST, ANY FUNDS ARISING UNDER THIS ACT AND ANY OTHER MONIES UNDER ITS CONTROL IN ACCORDANCE WITH THE ACT AND SELL ANY SECURITIES AND RE-INVEST THE PROCEEDS OR USE THE PROCEEDS IN ACCORDANCE WITH THE ACT.

(ii) PLACE ANY OF ITS FUNDS AND MONIES ON DEPOSIT IN A CHARTERED BANK.

[**NOTE**: THE COMMITTEE BELIEVES THAT THE WORKERS' COMPENSATION BOARD HAS AN OBLIGATION TO ENSURE THAT THE WORKERS' COMPENSATION SYSTEM OBTAINS THE REQUIRED LEVEL OF FUNDING AND IS FINANCIALLY VIABLE OVER THE LONG TERM. THE TWO FUNDAMENTAL ASPECTS TO THE BOARD'S OBLIGATION IN THIS AREA ARE, 1) ASSESSMENTS MUST BE SET AT AN APPROPRIATE LEVEL AND IN AN APPROPRIATE MANNER AND MUST BE COLLECTED IN AN EFFECTIVE MANNER; AND, 2) THE ACCIDENT FUND MUST BE INVESTED IN A WAY THAT MAXIMISES THE RATE OF RETURN WITHIN THE CONSTRAINTS OF FINANCIAL PRUDENCE AND SOUND FINANCIAL DECISIONS MUST BE THE WATCHWORD OF THE PROCESS.

WE ARE ADVISED THAT THESE INVESTMENT DECISIONS ARE PRESENTLY CARRIED OUT BY THE CHAIRMAN, THE EXECUTIVE DIRECTOR AND THE FINANCE OFFICER AND THAT MOST OF THE EXPERTISE IN THE FIELD, RESIDES WITH THE FINANCE OFFICER.

TO THE BEST OF OUR ABILITY, WE SEE THAT THESE THREE OFFICERS OF THE BOARD HAVE BEEN INVESTING CONSIDERABLE SUMS OF MONEY AND HAVE BEEN RETURNING REASONABLE INVESTMENT INCOME TO THE SYSTEM, AS A RESULT OF THEIR DECISIONS. WE ARE NOT BEING UNNECCESARILY CRITICAL TOWARDS THEIR EFFORTS, WHEN WE SUGGEST THAT THE BOARD OF GOVERNORS APPOINT AN INVESTMENT MANAGER TO ADVISE THEM IN THIS REGARD.

HOWEVER, WE HOLD SOME CONCERN THAT THE BEST POSSIBLE RETURN ON THEIR INVESTMENTS IS NOT BEING REALIZED, SIMPLY BECAUSE THIS AREA OF RESPONSIBILITY IS NOT THEIR PARTICULAR FORTE.

WE BELIEVE THAT A CONTRACT WITH A WELL ESTABLISHED AND SKILLED INVESTMENT MANAGER WOULD REAP DIVIDENDS AND RELIEVE THESE THREE OFFICERS OF THIS PARTICULAR DUTY AND FREE THEM UP, SOMEWHAT, SO AS TO PERFORM OTHER DUTIES TO WHICH THEY ARE OBLIGATED.

ALTHOUGH WE HAVE NOT MADE THE RECOMMENDATION TO APPOINT AN INVESTMENT MANAGER AN ABSOLUTE; NEVERTHELESS, WE DO STRONGLY SUGGEST THAT IT BE TRIED ON A FIVE YEAR TRIAL BASIS, SO AS TO ALLOW FOR A REASONABLE COMPARISON TO BE MADE BETWEEN THE TWO POSSIBLE METHODS OF HANDLING THIS FUND.]

(D) THE BOARD OF GOVERNORS SHALL:

(i) ACCEPT, CONSIDER AND DETERMINE APPEALS FROM DECISIONS OF THE APPEAL TRIBUNAL THAT ALLEGE VIOLATIONS OF BOARD POLICIES, BY-LAWS OR PRACTICES BY THE APPEAL TRIBUNAL IN ITS' DECISION.

(ii) THE BOARD OF GOVERNORS SHALL NOT DETERMINE APPEALS ON GROUNDS OTHER THAN THOSE SET OUT IN (i) ABOVE.

SECTION 20

For the purposes of the re-organization which the Committee recommends later in this report, it is necessary to recommend changes in specific areas of the Act to accommodate the proposed re-organization.

RECOMMENDATION L-36

(A) SECTION 20(2) - THAT THIS SECTION BE REPEALED.

(B) PERSONS APPOINTED UNDER THIS SECTION SHOULD TAKE AND SUBSCRIBE AN OATH OR AFFIRMATION OF OFFICE IN A PRESCRIBED FORM.

RECOMMENDATION L-37

(A) SECTION 23 - THAT THE CHAIR CONTINUE TO BE REMUNERATED AT THE SALARY LEVEL PRESENTLY EXISTING *FOR THE PERIOD OF RE-ORGANIZATION.*

(B) THAT FOLLOWING THE RE-ORGANIZATION THE CHAIR BE REMUNERATED AT $10,000.00 PER ANNUM PLUS $200.00 PER DIEM.

(C) THAT THE GOVERNORS (MEMBERS) CONTINUE TO BE REMUNERATED AT THE SALARY LEVEL PRESENTLY EXISTING *FOR THE PERIOD OF RE-ORGANIZATION.*

(D) THAT FOLLOWING THE RE-ORGANIZATION THE GOVERNORS BE REMUNERATED AT $5,000.00 PER ANNUM PLUS $100.00 PER DIEM.

SECTION 28 - STAFF

The Committee has heard considerable comment upon and reviewed recommendations related to staffing the Workers' Compensation Board and with specific regard to who should control the hiring of personnel.

One opinion ventures that government, i.e. the Civil Service Commission, should have no authority in regards to the hiring of staff for the Workers' Compensation Board. To quote:

> "In our opinion, if the Board is to be effective and cost efficient the Board must have the unrestricted ability to perform all actions relating to the employment of its workers including the ability to hire, transfer, promote, demote, and dismiss the workers without involvement of any government department, commission, or agency.
>
> This Board, if not funded in its entirety, is almost totally funded by the employers and as one employers group we would request that the present practice of employment through the government commission be terminated and a new system of employment practices and policies be established which will allow for all prospective employees an equal opportunity for employment with the Board."

This opinion fits well with one of the fundamental principles as communicated by Meredith, i.e. "administration of the compensation system should be by an independent commission."

Another opinion, however, suggests, "Staff control should be governed by the P.E.I. Civil Service Commission. All hirings, promotions, etc., should be conducted in accordance with accepted practices."

It is a general principle that the essential difference between a government department and a board or tribunal is that a department of government functions under the direction of a minister while, on the other hand, a board or tribunal does not come under the direct control or influence of a minister.

Our research indicates that generally the Boards (across Canada) are responsible for administrative as well as adjudicative decisions, without seeking or accepting any direction or guidance from a minister or, indeed, any department of government.

The Committee is convinced that a large degree of control, with respect to the staff of the Board, must reside with the Board itself; and, yet, the Committee feels that there should exist some degree of checks and balances that will satisfy those concerns related to allegations, suggestions, and speculation of questionable management practices over the recent history of this Board, as commented upon by a number of presenters.

The Committee, in the following recommendations takes into consideration the foregoing and has, we believe, found answers that are unique, nevertheless workable.

RECOMMENDATION L-38

(A) SECTION 28 - THAT THE EXISTING SECTION BE REPEALED.

(B) THAT THE FOLLOWING BE SUBSTITUTED FOR THE REPEALED SECTION: THE BOARD SHALL APPOINT A CHIEF EXECUTIVE OFFICER AND A STAFF OF SUCH OTHER PERSONS AS IT CONSIDERS NECESSARY FOR CARRYING OUT THE PROVISIONS OF THIS ACT.

(C) THAT ANY POSITIONS CREATED BY THE BOARD SHALL FOLLOW THE POSITION CLASSIFICATION SYSTEM WHICH EXISTS WITHIN THE CIVIL SERVICE COMMISSION OF THE PROVINCE.

(D) THAT WHERE ANY POSITION IS CREATED AT THE BOARD AND A POSITION CLASSIFICATION DESCRIPTION DOES NOT EXIST WITHIN THE CIVIL SERVICE SYSTEM PRESENTLY, THE BOARD SHALL REQUEST THE CIVIL SERVICE COMMISSION TO PREPARE AN APPROPRIATE DESCRIPTION FOR THEIR USE. THE COMMISSION SHALL COMPLY AND THE BOARD SHALL COOPERATE WITH THE COMMISSION AND BE COMPELLED TO UTILIZE ALL JOB DESCRIPTIONS AS SUPPLIED BY THE COMMISSION.

(E) THAT THE CIVIL SERVICE COMMISSION SHALL BE RESPONSIBLE FOR DETERMINING JOB DESCRIPTIONS AND THE NECESSARY QUALIFICATIONS FOR ALL JOBS AT THE BOARD USING THE SAME CRITERIA FOR ESTABLISHING POSITIONS IN THE GOVERNMENT SERVICE.

(F) THAT ALL VACANCIES OR NEW POSITIONS CREATED, WHICH OCCUR AT THE BOARD AND WHICH ARE NOT FILLED BY EXISTING STAFF AT THE BOARD THROUGH PROMOTION, SHALL BE ADVERTISED PUBLICLY AND OPEN JOB COMPETITIONS SHALL BE THE METHOD FOR FILLING SUCH POSITIONS.

(G) THAT THE BOARD WILL HAVE THE UNFETTERED RIGHT TO HIRE THE BEST QUALIFIED, BEST SUITED APPLICANT FOLLOWING A BONA-FIDE INTERVIEW AND TESTING PROCESS.

(H) THAT THE CIVIL SERVICE COMMISSION SHALL HAVE NO AUTHORITY OVER HIRING, FIRING, PROMOTIONS, ETC. OF STAFF AT THE BOARD EXCEPT AS OTHERWISE SET OUT HEREIN AND THAT ANY NECESSARY AMENDMENTS TO THE CIVIL SERVICE ACT SHALL BE AFFECTED TO ENSURE SUCH IS THE CASE.

(I) THAT THE BOARD SHOULD NOT HAVE THE PRIVILEGE TO HIRE STAFF ON A CONTRACT OR CASUAL BASIS *EXCEPT* UNDER THE STRICTEST OF TERMS RELATED TO A SPECIFIC PROJECT WHICH HAS A PREDETERMINED COMMENCEMENT AND COMPLETION DATE. THE PROJECT SHOULD BE SPECIFIC TO A BONA-FIDE FUNCTION OF THE BOARD AND CONTRACT OR CASUAL EMPLOYMENT SHALL ONLY BE UTILIZED WHERE EXISTING STAFF ARE UNABLE, BY VIRTUE OF QUALIFICATIONS OR NUMBERS, TO FULFILL THE NEED.

(J) THAT WHERE STAFF FALL WITHIN CLASSIFICATION STRUCTURES THAT ARE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PROVINCIAL GOVERNMENT AND THE UNION OF PUBLIC SECTOR EMPLOYEES, THE COLLECTIVE AGREEMENT SHALL CONTINUE TO APPLY TO SUCH STAFF OF THE BOARD AS IF THEY WERE CIVIL SERVICE EMPLOYEES AND THE BOARD SHALL BE BOUND BY THE COLLECTIVE AGREEMENT IN ALL RESPECTS, AS IF IT WERE THE EMPLOYER UNDER THE AGREEMENT. THE WORKERS' COMPENSATION BOARD SHOULD BE SPECIFICALLY REFERENCED IN THE COLLECTIVE AGREEMENT AS AN EMPLOYER.

CHIEF EXECUTIVE OFFICER

RECOMMENDATION L-39

NEW SECTION - CHIEF EXECUTIVE OFFICER

(A) THAT THE POSITION OF CHIEF EXECUTIVE OFFICER OF THE WORKERS' COMPENSATION BOARD BE CREATED.

(B) THAT THE POSITION OF CHIEF EXECUTIVE OFFICER BE RESPONSIBLE TO AND REPORT TO THE BOARD.

(C) THAT THE POSITION OF CHIEF EXECUTIVE OFFICER BE AN EX-OFFICIO MEMBER OF THE BOARD WITHOUT A VOTE. ALTHOUGH AN EX-OFFICIO MEMBER THE C.E.O. IS NOT TO BE CONSIDERED A GOVERNOR.

(D) THAT, AS THE CHIEF ADMINISTRATIVE OFFICER, THE CHIEF EXECUTIVE OFFICER IS RESPONSIBLE FOR THE DAY-TO-DAY MANAGEMENT OF THE WORKERS' COMPENSATION BOARD AND FOR ENSURING THAT THE DIRECTIONS OF THE BOARD ARE CARRIED OUT.

(E) THAT THE CHIEF EXECUTIVE OFFICER SHOULD POSSESS A CLEAR COMMITMENT TO THE MATTERS WITHIN THE JURISDICTION OF THE WORKERS' COMPENSATION BOARD AND SHALL POSSESS STRONG ADMINISTRATIVE AND EXECUTIVE SKILLS.

(F) THAT THE CHIEF EXECUTIVE OFFICER HAVE NO ROLE OR INVOLVEMENT IN THE FINAL ADJUDICATION OF CLAIMS APPEALS.

(G) THAT THE CIVIL SERVICE COMMISSION PROVIDE THE BOARD WITH THE APPROPRIATE POSITION CLASSIFICATION DESCRIPTION AND THE REQUIRED QUALIFICATIONS FOR THE POSITION OF CHIEF EXECUTIVE OFFICER.

(H) THAT THE BOARD ADVERTISE THE POSITION PUBLICLY FOR AN APPROPRIATE PERIOD OF TIME.

(I) THAT THE BOARD RETAIN THE SERVICES OF A REPUTABLE PERSONNEL FIRM TO CONDUCT INTERVIEWS OF ALL APPLICANTS WHO MEET THE QUALIFICATIONS AS ADVERTISED AND RECOMMEND THE BEST QUALIFIED APPLICANT TO THE BOARD.

(J) THAT THE BOARD BE PERMITTED TO NEGOTIATE AN EMPLOYMENT CONTRACT, COMPENSATION AND BENEFITS PACKAGE WITH THE SUCCESSFUL APPLICANT.

(K) THAT THE POSITION SHOULD PAY, *NO LESS* THAN $60,000.00 PER ANNUM SO AS TO ATTRACT COMPETENT INDIVIDUALS.

(L) THAT THE C.E.O. BE HIRED PRIOR TO THE REORGANIZATION AS RECOMMENDED LATER IN THIS REPORT.

(M) THAT THE C.E.O. WORK CLOSELY WITH THE BOARD AND ITS CHAIRMAN IN THE RE-ORGANIZATION OF THE WORKERS' COMPENSATION BOARD.

MATTERS RELATED TO ADMINISTRATIVE AND FINANCIAL AUDITS

RECOMMENDATION L-40

(A) NEW SECTION — THAT THE *AUDIT ACT*, CHAPTER A-24, SHALL APPLY TO THE WORKERS' COMPENSATION BOARD FOR THE PURPOSES OF ADMINISTRATIVE AND FINANCIAL AUDIT IN ADDITION TO AND REGARDLESS OF THE FACT OF THE REQUIRED AUDIT AS SET OUT IN SECTION 33 OF THE WORKERS' COMPENSATION ACT.

(B) THAT THE AUDITOR GENERAL AUDIT THE BOARD, NO LESS FREQUENTLY THAN EVERY FOUR (4) YEARS AND REPORT TO THE LEGISLATIVE ASSEMBLY ON HIS FINDINGS AND RECOMMENDATIONS ON EACH OCCASION.

PRIVATIVE CLAUSE

The Committee has heard considerable comment from a wide variety of presenters with regard to appeals, legal challenges, the independence of the Board, an inquiry system as opposed to an adversarial system; and, generally, a concern has been expressed that as "best as possible" the Act should contemplate a swift, fair, just, equitable and cheap process of decision making, including appeals from administrative decisions and excluding the involvement of the courts in the process.

Embodied within the "Meredith Principles" are the basic concepts of "no fault coverage" which stands in opposition to the common law principle of liability; the principle of "collective liability" whereby Employers bear the burden of occupational injury and disease collectively; the principle of a "guaranteed benefit" to injured workers; and finally, the principle that independent boards were granted quasi-judicial authority to make final determination of all matters pertaining to Workers' Compensation law.

These inherent principles of Workers' Compensation law beg the exclusion of any involvement by the courts in the workings of these boards.

Research indicates that the courts assert an authority to prevail over privative clauses within legislation which they may sometimes exercise in cases related to Workers' Compensation matters.

However, the courts appear to do so under limited circumstances such as issues related to jurisdiction or where there was a failure to observe the rules of natural justice, or where a conclusion was reached in law that the court may consider to be patently unreasonable.

The Committee is convinced that it is in the best interests of all concerned, to keep litigation to a minimum in all proceedings under the Workers' Compensation system; and, at the heart of providing a litigation free process, is a strongly worded privative clause.

As a result the Committee would recommend that a strongly worded privative clause be included in the Act.

Our research does indicate that, outside the Maritime Provinces, other jurisdictions do provide strongly worded clauses in their legislation.

RECOMMENDATION L-41

(A) SECTION 32 - THAT SECTIONS 32(1), (2), (3), (4) AND (7) SHOULD BE REPEALED.

(B) THAT THE FOLLOWING PRIVATIVE CLAUSE SHOULD BE INSERTED INTO THE ACT: THE BOARD HAS EXCLUSIVE JURISDICTION TO EXAMINE INTO, HEAR, AND DETERMINE, ALL MATTERS AND QUESTIONS ARISING UNDER THIS ACT AND AS TO ANY MATTER OR THING IN RESPECT OF WHICH ANY POWER, AUTHORITY, OR DISCRETION, IS CONFERRED UPON THE BOARD; AND THE ACTION OR DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE AND IS NOT OPEN TO QUESTION

OR REVIEW IN ANY COURT; **AND NO PROCEEDINGS BY OR BEFORE THE BOARD SHALL BE RESTRAINED BY INJUNCTION, PROHIBITION, OR OTHER PROCESS OR PROCEEDING IN ANY COURT, OR ARE REMOVABLE BY CERTIORARI OR OTHERWISE INTO ANY COURT.**

[NOTE: THE FOREGOING APPEARS IN THE MANITOBA LEGISLATION.]

(C) THAT THE DECISIONS AND FINDINGS OF THE BOARD UPON ALL QUESTIONS OF LAW AND FACT ARE FINAL AND CONCLUSIVE, AND IN PARTICULAR, BUT NOT SO AS TO RESTRICT THE GENERALITY OF THE POWERS OF THE BOARD HEREUNDER, THE FOLLOWING SHALL BE DEEMED TO BE QUESTIONS OF FACT:

(i) THE QUESTION WHETHER AN INJURY HAS ARISEN OUT OF OR IN THE COURSE OF ANY EMPLOYMENT WITHIN THE SCOPE OF THIS ACT;

(ii) THE EXISTENCE AND DEGREE OF DISABILITY BY REASON OF ANY INJURY;

(iii) THE PERMANENCE OF DISABILITY BY ANY INJURY;

(iv) THE DEGREE OF DIMINUTION OF EARNING CAPACITY BY REASON OF ANY INJURY;

(v) THE AMOUNT OF AVERAGE EARNINGS;

(vi) THE EXISTENCE OF THE RELATIONSHIP OF A MEMBER OF THE FAMILY;

(vii) THE EXISTENCE OF DEPENDENCY;

(viii) THE CHARACTER, FOR THE PURPOSE OF THIS ACT, OF ANY EMPLOYMENT, ESTABLISHMENT OR DEPARTMENT AND THE CLASS TO WHICH SUCH EMPLOYMENT, ESTABLISHMENT OR DEPARTMENT SHOULD BE ASSIGNED;

(ix) WHETHER OR NOT ANY EMPLOYEE IN ANY INDUSTRY WITHIN THE SCOPE OF THIS PART IS HIMSELF WITHIN THE SCOPE OF THIS PART AND ENTITLED TO COMPENSATION THEREUNDER;

(x) THE QUESTION WHETHER PERSONAL INJURY OR DEATH HAS BEEN CAUSED BY ACCIDENT.

(D) THAT SECTIONS 32(5) AND (6) BE CONTINUED IN THE ACT:

(i) THE BOARD MAY OF ITS OWN MOTION STATE A CASE IN WRITING FOR THE OPINION OF THE SUPREME COURT IN BANCO UPON ANY QUESTION WHICH IN THE OPINION OF THE BOARD IS A QUESTION OF LAW.

(ii) HEAR AND DETERMINE THE QUESTIONS OF LAW ARISING THEREON AND REMIT THE MATTER TO THE BOARD, WITH THE OPINION OF THE COURT THEREON.

SECTION 34 - ANNUAL REPORT BY THE BOARD

The Committee is convinced that the format of the annual report of the Board to the Minister is lacking in specific detail and is absent any comment with regard to Board programs or projects, completed or planned.

The "Roach Report", Ontario, May 31, 1950 addressed this very concern and at Page 112 the following comment, with which this Committee agrees, is found:

> "In my respectful submission the Board's annual report should be sufficiently comprehensive to enable industry generally and the various classes and sub-classes in particular to ascertain by reference to it the total assessments made upon it and them, the compensation and pensions awarded to workmen in the various classes and sub-classes during the year, the outstanding liability of the Board in respect of compensation and/or pensions divided among the various classes and sub-classes and the funds in the possession of the Board to meet those liabilities. Without here detailing them I think the statistical information which was included in the annual report, for example, in 1942 should be included in each annual report."

RECOMMENDATION L-42

SECTION 34 - ANNUAL REPORT

(A) THAT THE WORDS "OF LABOUR" IN LINE TWO SHOULD BE DELETED. IT IS NOT NECESSARY, WITH THE PROPOSED DEFINITION OF MINISTER IN SECTION 1 TO IDENTIFY THE MINISTER OF LABOUR OR ANY OTHER SPECIFIC MINISTER HEREIN.

(B) THE COMMITTEE IS PERSUADED THAT THE ANNUAL REPORT OF THE BOARD SHOULD CONTAIN BROADENED AND MORE DETAILED INFORMATION AS IT PERTAINS TO FINANCES; THE ACTIVITIES OF THE BOARD FOR THE PRECEEDING YEAR; TO THE PLANS AND AGENDA FOR THE FUTURE; AND, TO INCLUDE THE INVESTMENT PORTFOLIO OF ITS' PENSION FUNDS.

WE WOULD RECOMMEND THAT THE FORMAT OF THE REPORT SHOULD INCLUDE, IN ADDITION TO THE PRESENTLY RECORDED STATISTICS A SECTION WHICH SHOULD HIGHLIGHT SOME OF THE MORE INTERESTING AND INFORMATIVE ACTIVITIES OR PROJECTS OF THE BOARD IN THE PRECEEDING YEAR; THE CHAIRMAN'S MESSAGE OR REPORT; THE CHIEF EXECUTIVE OFFICERS' REPORT; THE CHIEF APPEALS COMMISSIONERS' REPORT; SPECIFIC REFERENCE TO PENSIONS BEING PAID WITH

REGARD TO NUMBERS, CATEGORIES, VALUES, ETC.; SOME DETAIL WITH REGARD TO THE STRUCTURE OR MAKE-UP OF CLASSES. A SUBSIDIARY FINANCIAL REPORT SHOULD BE AVAILABLE, UPON REQUEST, WHICH DETAILS THE EXPERIENCE OF INDIVIDUAL CLASSES AND SUB-CLASSES (ASSESSMENTS RECEIVED VS. MONIES PAID OUT) OVER THE PAST YEAR.

STAFF DEEMED TO BE EMPLOYED IN THE CIVIL SERVICE

RECOMMENDATION L-43

SECTION 37 - CIVIL SERVICE SUPERANNUATION ACT

(A) IN KEEPING WITH RECOMMENDATION L-28 THE COMMITTEE RECOMMENDS THAT SECTION 37 OF THE ACT BE LOOKED AT CAREFULLY TO ENSURE THAT THERE WILL EXIST NO CONFLICT BETWEEN THIS SECTION AND OUR RECOMMENDATION L-28.

(B) SHOULD THE POTENTIAL FOR CONFLICT EXIST, THEN SECTION 37 SHOULD BE AMENDED ACCORDINGLY SO AS TO REMOVE SUCH POTENTIAL FOR CONFLICT.

APPEAL BOARD

An area of interest which attracted considerable attention and comment from the presenters, had to do with appeals and the appeal procedure, or lack thereof.

The following capsulate some of the comments which the Committee heard from presenters or read in the many briefs, which we received in the course of this review:

> "The appeals procedures (should) be kept simple and non-litigious in nature, and be open to both parties."
>
> "Knowledgeable and well qualified individuals who have a demonstrated expertise in Workers' Compensation be appointed to the final appeals level."
>
> "Appeals mechanism apply the legislation and not expand it with interpretations inconsistent with the intent of the legislation."
>
> "An independent Appeal Board should be established immediately."
>
> "(There is an) irony in appealing a decision to the same WCB — who made the original decision."

> "(The) appeals process should be independent of the primary adjudication process."
>
> "We would caution against setting up an elaborate 'outside' appeal body. Instead, some internal mechanism should be sought which would provide a fair review of initial decisions, and avoid the conundrum of the same individuals sitting in judgement of their own decisions."
>
> "Appeals should be timely, fair and democratic. The appeal system should be independent of the primary adjudication process and comprised only of the parties of direct interest (labour, business and their representatives)."

The Committee stands convinced that there is a critical need for a clearly established appeals process, which should be administered by a body that is not encumbered with the day-to-day administrative functions of the Board and which is not involved in any fashion with the original decisions of any matters with which it may be confronted.

A concern has been raised that Employers should not be permitted to appeal any matter related to the claim filed by a worker, due to the "no fault" nature of Workers' Compensation Insurance and because such a right creates an adversarial process which should never be permitted to develop within this type of system, thereby creating great time delays and contributing to increasing the costs of the system.

In the *"Report of the Workers' Compensation Act Review Committee"*, 1986, Saskatchewan at Page 14, it was said, "Apart from the duty to give the Board all information in his or her possession that is pertinent to the claim, the employer is not an active participant in the process of adjudication and adjustment of claims and does not intervene in that process."

Another concern that was raised was with regard to the injured worker being required to supply evidence or proof of his right to compensation which appears to run contrary to Section 17 of the Act.

To quote from one presentation:

> "We have already been subject to being required to disclose details of all aspects of our personal lives as well as those of other family members, which obviously contributes to a sense of loss of dignity and self-esteem, especially to persons who all their lives have been totally self-reliant."
>
> "To have the onus of proving the causes of these symptoms resting on the claimant in order to obtain necessary financial assistance and at the same time dealing with all the other pressures exerted by that illness seems totally unacceptable. It is certainly my opinion that in the absence of proof to the contrary, such assistance should be more readily accessable."
>
> "By letter dated 24 May 1989, we were informed that a medical panel would be established to deal with our appeal and we have heard nothing to this date." (Oct. 18, 1989.)

In the *"Report of the Workers' Compensation Review Committee"*, Manitoba, May 1987 at pages 25 and 26 the following comments and recommendations with respect to this subject area appear:

> "We learned a great deal about workers' compensation from those who participated in our public hearing dialogue. We learned that everyone involved — employers, workers, government, and the compensation administration wants an efficiently-run operation with speedy decisions being issued on all claims filed with the Board. This desire for speed and efficiency lies not only in the area of appeals of adverse decisions, important as that is to the system, but also at all other levels of decision-making. . .
>
> This wish for speed and efficiency cannot, however, be attained without the cooperation of all parties in supporting the basic workers' compensation philosophy, that it is an **inquiry system** rather than an adversarial one.
>
> By an **inquiry model**, we mean that no one has to prove his/her case, for or against, in the workers' compensation system. Rather, through the cooperation of employers and workers, when a work injury occurs there is a joint filing of forms to claim for compensation. Such a claim should and must be processed immediately, with an absolute minimum of investigation or control. Since this type of unquestioned claim makes up the vast majority of the 54,000 + claims filed in Manitoba (1986), it is absolutely essential that the Board rely on the self-policing of the system by workers and employers. To do otherwise would grind the machinery to a halt. If there are concerns with fraud control, we would far rather see the matter handled through quality control measures than through holding up this bulk of claims which must flow through the system smoothly.
>
> Some claims, however, do not fit into this mold of unquestioned and easy case. It may be that either the worker, the employer or the doctor has some doubt about a claim being legitimate, either under the legal definition of what constitutes a work injury, or through a questioning of the facts surrounding the injury. *It is **not** the responsibility of the worker to prove that s/he has a valid claim. Alternatively, it is **not** the responsibility of the employer to prove that the worker has an invalid claim.** Rather it is the responsibility of the workers' compensation system to make sufficient inquiry into the claim, through investigation using internal and external experts, to determine whether a legitimate claim has been filed. . . .
>
> In view of our strong feelings in this regard, it will be noted throughout our recommendations that we try as much as possible to leave both the law and the administration of the law non-adversarial."

Our research does indicate that, as a general principle, Workers' Compensation legislation throughout the country provide for an enquiry process and not an adversarial system and therefore there is no burden of proof on anyone except the Board itself.

This Committee holds a critical concern that the system not become one that is adversarial in nature and therefore become burdened down with litigious procedures which, by their very nature, will add time delays and costs to a system that should be otherwise designed for speedy and efficient decision making.

* - emphasis, ours

RECOMMENDATION L-44

NEW SECTION - APPEAL BOARD

(A) THAT AN APPEAL BOARD BE ESTABLISHED WITHIN LEGISLATION CONSISTING OF THE CHIEF APPEALS COMMISSIONER (C.A.C.) AND SIX COMMISSIONERS.

(B) THAT THE CHIEF APPEALS COMMISSIONER BE APPOINTED BY THE WORKERS' COMPENSATION BOARD IN CONSULTATION WITH EMPLOYER AND EMPLOYEE ORGANIZATIONS FOR A TERM OF NOT LESS THAN FIVE YEARS AND MAY BE RE-APPOINTED AT THE EXPIRATION OF HIS/HER TERM.

(C) THAT THE BOARD APPOINT A CHIEF APPEALS COMMISSIONER WHO BEST EXHIBITS THOSE ATTRIBUTES WHICH WOULD BE NECESSARY TO FUNCTION IN THIS ROLE IN A TIMELY, FAIR, EQUITABLE AND DEMOCRATIC FASHION AND A PERSON WHO IS ACCEPTABLE TO THE PARTIES OF INTEREST. THIS PERSON SHOULD HAVE A LEGAL BACKGROUND OR BE A PERSON TRAINED IN COMPENSATION LAW.

(D) THAT THE POSITION OF CHIEF APPEALS COMMISSIONER BE CREATED AS A "PART-TIME" POSITION.

(E) THAT THE POSITION OF CHIEF APPEALS COMMISSIONER BE RESPONSIBLE TO AND REPORT TO THE BOARD OF GOVERNORS.

(F) THAT THE POSITION OF CHIEF APPEALS COMMISSIONER BE AN EX-OFFICIO MEMBER OF THE BOARD OF GOVERNORS WITHOUT A VOTE. ALTHOUGH AN EX-OFFICIO MEMBER, THE C.A.C. IS NOT TO BE CONSIDERED A GOVERNOR.

(G) THAT THE CHIEF APPEALS COMMISSIONER IS RESPONSIBLE FOR THE PROPER FUNCTIONING OF THE APPEALS PROCESS AND FOR ENSURING SPEEDY, FAIR AND JUST DECISIONS ON ALL APPEALS THAT REACH HIS LEVEL.

(H) THAT THE CHIEF APPEALS COMMISSIONER SHOULD BE REMUNERATED AT $5000.00 PER ANNUM, PLUS $200.00 PER DIEM.

(I) THAT THERE SHOULD BE SIX COMMISSIONERS TO THE APPEALS BOARD COMPRISED OF THREE EMPLOYER REPRESENTATIVES AND THREE WORKER REPRESENTATIVES.

(J) THAT THE COMMISSIONERS BE APPOINTED TO THE APPEALS BOARD BY THE BOARD OF GOVERNORS FROM A LIST OF NAMES SUBMITTED TO THEM IN NOMINATION FROM EMPLOYER AND EMPLOYEE ORGANIZATIONS.

(K) THAT THE COMMISSIONERS BE APPOINTED TO THE APPEALS BOARD FOR TERMS OF NOT LESS THAN THREE YEARS AND NOT MORE THAN FIVE YEARS AND THAT THEY MAY BE RE-APPOINTED FOLLOWING EXPIRATION OF THEIR TERM.

(L) THAT THE APPOINTMENTS TO POSITIONS OF COMMISSIONER BE OF INDIVIDUALS WHO BEST EXHIBIT ATTRIBUTES WHICH ARE NECESSARY TO FULLFILL THE ROLE OF AN APPEALS COMMISSIONER. CAREFUL CONSIDERATION SHOULD BE GIVEN TO THE APPOINTMENT OF INDIVIDUALS WHO ARE REPRESENTATIVE OF THE SENIOR RANKS OF THEIR ORGANIZATIONS AND WHO HAVE DEMONSTRATED SKILLS IN MATTERS RELATED TO THE ADJUDICATIVE PROCESS.

(M) THAT THE COMMISSIONERS BE RESPONSIBLE TO AND REPORT TO THE CHIEF APPEALS COMMISSIONER.

(N) THAT THE COMMISSIONERS BE REMUNERATED AT $100.00 PER DIEM.

(O) THAT THE ADMINISTRATIVE EXPENSES OF THE APPEAL BOARD BE BORNE BY THE BOARD.

(P) THAT ALL APPEALS SHALL BE HEARD AND DECIDED BY A PANEL OF THREE, COMPRISING THE CHIEF APPEALS COMMISSIONER AS THE CHAIRMAN OF THE TRIBUNAL AND ONE COMMISSIONER REPRESENTING EMPLOYERS AND ONE COMMISIONER REPRESENTING WORKERS.

(Q) THAT THE CHIEF APPEALS COMMISSIONER SHALL HAVE THE AUTHORITY TO APPOINT A VICE-CHAIRMAN FROM EACH INTEREST OF REPRESENTATION AND THE VICE-CHAIRMAN MAY ACT AS CHAIRMAN WHEN THE CHIEF APPEALS COMMISSIONER IS ABSENT.

(R) THAT THE BOARD OF GOVERNORS SHALL ENSURE THE NECESSARY SERVICES OF A SUPPORT NATURE, E.G. CLERICAL/SECRETARIAL, TO THE APPEALS BOARD AS IS NECESSARY.

(S) THE COMMITTEE SEES APPEALS ARISING FROM MATTERS RELATED TO CLAIMS APPEALS, ASSESSMENT APPEALS AND PENALTY APPEALS.

IN EACH CASE THERE SHOULD BE ESTABLISHED, AND PUBLISHED, A CLEAR COURSE OF PROCESS TO FOLLOW IN ALL APPEALS, *FOR EXAMPLE*:

CLAIMS APPEALS

(i) FROM CLAIMS OFFICER TO DIRECTOR OF CLAIMS;

(ii) FROM DIRECTOR OF CLAIMS TO A MEDICAL PANEL;

(iii) FROM A MEDICAL PANEL TO APPEAL BOARD;

(iv) SHOULD ANYONE EXPERIENCE UNDUE DELAYS AT THE EARLIER LEVELS OF APPEAL THEY SHOULD NOT BE PROHIBITED FROM APPEALING TO THE NEXT LEVEL WITHIN A REASONABLE TIME FRAME AND SUCH SHOULD BE SET OUT IN THE LEGISLATION.

(v) APPEALS ARE NOT LIMITED TO CLAIMS FOR COMPENSATION AND INDEED MAY ARISE IN MATTERS RELATED TO ASSESSMENTS, PENALTIES, REHABILITATION, CLASS ASSIGNMENTS, AND PROVISIONS OF MEDICAL CARE AND SUCH SHOULD BE SET OUT IN THE LEGISLATION.

(T) THE CHIEF APPEALS COMMISSIONER MAY REFER TO A PANEL ANY MATTER THAT IS BEFORE ANOTHER PANEL, COMPRISED OF DIFFERENT MEMBERS FOR WHATEVER REASON HE/SHE MAY DETERMINE TO ENSURE JUSTICE IS APPROPRIATELY CARRIED OUT IN THE MATTER.

(U) THAT A PANEL CEASES TO EXIST WHEN THE MATTER BEFORE IT HAS BEEN DECIDED.

(V) THAT ALL DECISIONS OF THE APPEAL BOARD SHALL BE IN WRITING, WITH REASONS.

(W) THAT FOR ALL PURPOSES, A DECISION OF A PANEL IS A DECISION OF THE APPEAL BOARD AND THE DECISION OF THE MAJORITY OF A PANEL REPRESENTS THE DECISION OF THE APPEAL BOARD.

(X) THAT NO MEMBER OF THE APPEAL BOARD MAY PARTICIPATE IN ANY APPEAL PROCESS IN WHICH A MEMBER HAS A DIRECT PERSONAL INTEREST OR IN WHICH THE CHIEF APPEALS COMMISSIONER DETERMINES THERE IS A CONFLICT OF INTEREST.

(Y) (i) THAT THE PROCEDURE BEFORE THE APPEALS BOARD SHOULD BE, LIKE PRIMARY ADJUDICATION, ON THE **"INQUIRY MODEL"** AND NOT BE OF AN ADVERSARIAL NATURE, NOR SHOULD THE ONUS BE ON THE INJURED WORKER TO PROVE HIS/HER CASE. ACCORDING TO SECTION 17 THE WORKER IS ENTITLED TO THE "BENEFIT OF THE DOUBT" AND IS NOT REQUIRED TO "ADDUCE CONCLUSIVE PROOF OF HIS RIGHT TO THE COMPENSATION APPLIED FOR". RATHER THAN HOLDING FORMAL "HEARINGS", PER SE, THE APPEAL PANEL SHOULD CONSIDER THAT IT IS INVOLVED IN A LESS FORMAL "ORAL ENQUIRY PROCESS" OR "APPEAL MEETING PROCESS".

(ii) THAT THE BURDEN OF PROOF RESIDES WITH THE BOARD.

(iii) THAT, UNLESS THERE IS EVIDENCE TO THE CONTRARY, THE PRESUMPTION THAT THE WORKER'S CLAIM IS JUSTIFIED SHOULD HOLD. THE EVIDENCE TO THE CONTRARY SHOULD BE OF SUCH WEIGHT AS TO GO BEYOND THE BALANCE OF PROBABILITIES.

(iv) THAT AN ORDER OR DECISION OF THE APPEAL BOARD IS FINAL AND CONCLUSIVE AND IS NOT OPEN TO QUESTION OR REVIEW, EXCEPT AS SET OUT IN RECOMMENDATION L-35(D)(i) HEREIN, IN A COURT OF LAW AND NO PROCEEDINGS BY OR BEFORE THE APPEAL BOARD SHALL BE RESTRAINED BY INJUNCTION, PROHIBITION OR OTHER PROCESS OR PROCEEDINGS IN A COURT OF LAW OR BE REMOVABLE BY CERTIORARI OR OTHERWISE INTO A COURT OF LAW (SOURCE: WORKERS' COMPENSATION ACT, NEWFOUNDLAND.)

(Z) (i) THAT, AND WE REITERATE, THE APPEAL PROCESS AT EVERY LEVEL SHALL BE OF AN INFORMAL NATURE AND THAT CLAIMANTS SHALL BE GIVEN EVERY OPPORTUNITY TO EXPRESS THEIR CONCERNS AND ASSERT THEIR CLAIMS IN AN ATMOSPHERE WHICH IS FREE FROM THE ADVERSARIAL PROCESS.

(ii) THAT THE APPEAL BOARD SHALL HAVE THE POWERS NECESSARY TO GARNER ALL THE FACTS, CALL WITNESSES, INVESTIGATE, ENQUIRE, AND AMEND, OR ALTER DECISIONS MADE EARLIER IN THE PROCESS.

(iii) THE APPEALS TRIBUNAL SHALL DETERMINE ITS OWN PRACTICE AND PROCEDURE AND MAY, SUBJECT TO THE APPROVAL OF THE BOARD OF GOVERNORS, MAKE RULES GOVERNING ITS PRACTICE AND PROCEDURE AND THE EXERCISE OF ITS POWERS AND MAY PRESCRIBE SUCH FORMS AS IT CONSIDERS NECESSARY.

(iv) THE BOARD OF GOVERNORS AFTER CONSULTATION WITH REPRESENTATIVES OF EMPLOYERS ORGANIZATIONS, WORKERS ORGANIZATIONS AND PHYSICIANS SHALL APPOINT QUALIFIED MEDICAL PRACTITIONERS, OTHER THAN PRACTITIONERS WHO ARE ALREADY PROVIDING THEIR SERVICES TO THE BOARD IN OTHER AREAS OF ACTIVITY, TO A LIST; AND, THE APPEALS TRIBUNAL MAY OBTAIN THE ASSISTANCE OF ONE OR MORE OF THEM IN SUCH A WAY AND AT SUCH TIMES AS IT DEEMS NECESSARY TO BETTER ENABLE IT TO DETERMINE ANY MATTER OF FACT IN QUESTION IN ANY APPEAL. A MEDICAL PRACTITIONER SHALL NOT BE ASKED TO ASSIST THE APPEALS TRIBUNAL IN ANY APPEAL WHERE THE PRACTITIONER HAS HAD ANY PREVIOUS INVOLVEMENT WITH THE MATTER OF APPEAL, HAS TREATED THE WORKER OF RECORD OR ANY MEMBER OF HIS/HER FAMILY OR HAD ANY DIRECT INVOLVEMENT WITH THE EMPLOYER OF RECORD.

MATTERS RELATED TO SECTION 40 OF THE ACT — SCALE OF COMPENSATION

Not surprisingly, this area of interest produced considerable comment and recommendation from those individuals and organizations who made presentations to the Committee. Not surprising, because the level of benefits and pension awards is at the very heart of the Workers' Compensation System.

To quote from some of the concerns expressed by presenters:

"I find it awful hard to manage on what I am getting."

"Actual wage loss system include periodic revision of weekly benefits in light of economic and financial conditions in the province."

"Benefit ceilings should be increased and benefits received should be based upon the workers' ability to earn prior to the injury."

"Ceilings for permanent disability cases must be increased."

"Disability and survivor pensions must be indexed. We recommend the inclusion of a COLA provision to protect the workers' benefits against erosion by inflation."

"Funeral allowances should be adjusted to reflect today's costs."

"75% of a workers' average earnings - up to a maximum of $23,000.00. This is not adequate compensation. Widow/widower benefit of $450.00, the dependent child benefit of $100.00, are inadequate."

"People who are claiming WCB are being grossly underpaid and I think its nearly time this Act should be looked at and updated. I think people are getting benefits today that they were getting 20 years ago."

"Feel strongly that Pension benefits are inadequate in meeting the necessities of running a home and meeting general living expenses."

"(A) worker should be able to file an additional claim outlining relevant details as to the loss of enjoyment of life."

"The level of benefits received under WCB should be designed to fully replace all income lost by the worker."

"It is essential that we retain the notion of the dual award to provide compensation for the impairment from the injury and also compensation for the resulting loss of earnings."

"Benefits should not exceed the actual wage loss."

"(An) actual wage loss system be defined in such a way that reasonable limits, both in amounts and time periods, are inherent (in its) application."

Obviously the Committee was faced with the strong recommendations of injured workers and the workers' organizations to improve the benefits to which injured workers are entitled under the Act.

Equally strong recommendations were made by the employer organizations, with regard to keeping the costs in line and controllable. Employers were concerned that the P.E.I. Board not find itself in a similar position to some other Boards, notably Ontario, with a large unfunded liability.

The Committee is cognizant of these divergent points of view and makes its recommendations in consideration of this input received from the presenters and after researching comparative data with other jurisdictions; examination of wage structures and economic patterns within the province; and in recognition of the general principles of the *"Historic Compromise"*.

In his final Report to the Lieutenant Governor of the Province of Ontario (1913), the Honorable Sir William Ralph Meredith, C.J.O., stated, at Page 5:

> ". . . as I believe, the true aim of a compensation law is to provide for the injured workman and his dependants and to prevent their becoming a charge upon their relatives or friends, or upon the community at large."

AND

> "It is in my opinion essential that as far as is practicable there should be certainty that the injured workman and his dependants shall receive the compensation to which they are entitled, . . ."

RECOMMENDATION L-45

SECTION 38(1)

(A) (a) DELETE, "$900" IN THE SECOND LINE AND SUBSTITUTE WITH "$1500".

AND,

DELETE THE WORDS "NOT EXCEEDING $300" IN THE FOURTH AND FIFTH LINES.

(B) (b) DELETE "$500" IN THE SECOND LINE AND SUBSTITUTE WITH "$10,000".

AND,

DELETE "$450" IN THE SECOND LINE AND SUBSTITUTE WITH $550".

AND,

DELETE ALL WORDS AFTER "$550" IN THE SECOND LINE.

(C) (c) DELETE "$500" IN LINE TWO AND SUBSTITUTE WITH "$10,000".

AND

DELETE "$450" IN LINE THREE AND SUBSTITUTE WITH "$550".

AND

DELETE "$100" IN LINE FOUR AND SUBSTITUTE WITH "$150".

AND

DELETE ALL WORDS AFTER THE WORDS "UNDER THE AGE OF EIGHTEEN YEARS" IN LINE FOUR.

(D) (e) WHERE THE DEPENDANTS ARE CHILDREN, A LUMP SUM PAYMENT OF $10,000 SHALL BE PAID IN TRUST TO THE BOARD TO THE BENEFIT OF THE CHILDREN AND THEREAFTER A MONTHLY PAYMENT OF $150 TO EACH CHILD UNDER THE AGE OF EIGHTEEN YEARS.

(E) (f) DELETE "$60" AND "$80" WHERE THEY APPEAR IN THIS SECTION AND SUBSTITUTE WITH "$100" IN BOTH CASES.

SECTION 39(1) - COMMON LAW SPOUSE

With the Committee's recommendation earlier (Recommendation L-3) regarding a definition for "spouse", it is now felt that Section 39, in part, is not necessary for the good administration of the Act.

RECOMMENDATION L-46

SECTION 39

(A) REPEAL SECTION 39(1)(a) and (b)

(B) AMEND SECTION 39(2) AND RE-NUMBER AS 39(1):

"UPON THE MARRIAGE OF A SPOUSE, WHO WAS NOT LEGALLY MARRIED TO THE DECEASED WORKER, RECEIVING COMPENSATION OR ENTITLED TO RECEIVE COMPENSATION UNDER THIS ACT, THE PROVISIONS OF THIS ACT APPLY WITH ALL NECESSARY MODIFICATIONS AS IF THAT PERSON WERE THE WIDOW OR WIDOWER OF THE DECEASED WORKER."

(C) AMEND SECTION 39(3) AND RE-NUMBER AS 39(2):

"A SPOUSE, WHO WAS NOT LEGALLY MARRIED TO THE DECEASED WORKER, RECEIVING OR ENTITLED TO RECEIVE COMPENSATION UNDER THE PROVISIONS OF THIS ACT MAY NOT BE PAID COMPENSATION FOR ACTING OR CLAIMING TO ACT AS A FOSTER PARENT TO THE CHILDREN OF THE DECEASED WORKER."

SECTION 40(1) - REMARRIAGE OF DEPENDENT WIDOW OR WIDOWER

The Committee is prepared to recommend that the "pay-out" of Pension to a Widow or Widower, who remarries, should continue as a provision of the legislation.

The only comment received by the Committee on this question of discontinuing a Widow/Widower Pension after remarriage, simply requested an increase in value to the amount of the "pay-out".

RECOMMENDATION L-47

SECTION 40(1)

IF A DEPENDENT WIDOW OR WIDOWER REMARRIES, THE RIGHT TO COMPENSATION UNDER CLAUSE 38(1), (b), (c), OR (d) SHALL CEASE, BUT SHE OR HE SHALL BE ENTITLED TO A PAY-OUT OF PENSION BENEFIT OF TWELVE TIMES THE MONTHLY PAYMENT IN EFFECT AT THAT TIME.

SECTION 41

The existing legislation, in regulation, provides for an Education Supplement.

We are advised that such provision was, at one time, in the Act and was subsequently repealed and then later re-instated in regulation form.

The Committee is prepared to recommend that this provision should be contained in the Act and left there for obvious reasons.

RECOMMENDATION L-48

(A) SECTION 41(3) WHERE UNDER SUBSECTION (1) PAYMENTS IN RESPECT OF A CHILD CEASE ON THE CHILD ATTAINING THE AGE OF EIGHTEEN YEARS, THE CHILD SHALL BE ENTITLED TO CONTINUE TO RECEIVE AN EDUCATION SUPPLEMENT AT THE RATE SET OUT IN CLAUSE 38(1)(c) OF THE ACT FOR PAYMENTS TO A CHILD IF HE IS A REGISTERED, FULL-TIME STUDENT AT AN EDUCATIONAL INSTITUTION, RECOGNIZED BY THE BOARD, WHETHER SUCH INSTITUTION IS LOCATED WITHIN OR OUTSIDE THE PROVINCE.

(B) SECTION 41(4) THE EDUCATION SUPPLEMENT REFERRED TO IN (3) SHALL CEASE WHEN THE YOUNG PERSON ATTAINS THE AGE OF TWENTY-ONE YEARS.

SECTION 43 - PERMANENT PARTIAL DISABILITY

During our deliberations, the Board brought to our attention a major problem which they have been faced with on a number of occasions and which strikes at the very heart of equitable treatment in compensation, as regards permanent partial disability benefits.

The Board gave us a number of examples of this inequitable treatment, as it relates to specific claims which the Board has had to deal with; and, the Board attributes the problem to the manner in which Section 43(4) is worded and its' priority in relation to Section 43.

Without identifying any particular claimants, one of these examples, as provided by the Board goes as follows:

> Worker A, who is employed as a heavy equipment operator with employer X, is injured on the job. After medical rehabilitation, Worker A is determined to have a permanent partial disability and he is awarded a 20% P.P.D. pension in accordance with Section 43(4). Regardless of his disability, Worker A is able to go back to his pre-injury employment without diminished pay. Worker A is now receiving his regular pre-injury pay and, in addition, is receiving a pension from Workers' Compensation, due to the fact that the Board's medical opinion is that the disability is capable of or has the potential, of impairing his earning capacity in his future employment.
>
> Worker B, who also is employed as a heavy equipment operator with employer X, is injured on the job. After medical rehabilitation, Worker B is determined to have a permanent partial disability.
>
> Worker B's disability is rated at the equivalent of Worker A's disability; however, Worker B is not able to go back to his pre-injury employment, due to his disability. Worker B is provided with alternative employment with employer X, however at less pay than his pre-injury employment provided.
>
> In accordance with Section 43(1), the Board awards Worker B a pension equal to 75% of the difference between the average weekly wage earned by Worker B prior to his injury and his wage at the lower paid job in which he is now employed.
>
> Worker B is equally impacted by his injury, as is Worker A, in regard to his earning capacity impairment, now and into the future. However, Worker B is now earning less than his pre-injury employment, while Worker A is earning more than his pre-injury employment provided him. Therein lies the inequity.

Were the Board able to award Worker B a pension as per Section 43(4), in addition to compensating him for his diminished earnings, equity between the two scenarios could be achieved. However, at present, and due to the existing wording, the Board is unable to ensure equity in such circumstances.

The Committee considered a number of potential ways of ensuring equity in similar circumstances. However, most of these ways, we have determined, would tend to impact negatively, in one fashion or another, on injured workers as regards the potentiality of impairment to their earning capacity into the future, as per Section 43(4).

RECOMMENDATION L-49

A) THAT SUBSECTION 43(1) BE SUBSTITUTED FOR SUBSECTION 43(3);

B) THAT SUBSECTION 43(1), NOW APPEARING AS SUBSECTION 43(3) BE AMENDED TO READ:

> (3) "WITHOUT PREJUDICE TO SUBSECTION (1), WHERE PERMANENT PARTIAL DISABILITY RESULTS FROM THE INJURY THE COMPENSATION SHALL BE A WEEKLY OR OTHER PERIODICAL PAYMENT OF SEVENTY-FIVE PER CENT OF THE DIFFERENCE BETWEEN THE AVERAGE WEEKLY OR OTHER PERIODICAL EARNINGS OF THE WORKER BEFORE THE ACCIDENT AND THE AVERAGE AMOUNT WHICH HE IS EARNING OR IS ABLE TO EARN IN SOME SUITABLE EMPLOYMENT OR BUSINESS AFTER THE ACCIDENT AND SUCH COMPENSATION SHALL BE PAYABLE DURING THE LIFETIME OF THE WORKER.

C) THAT SUBSECTION 43(2) BE SUBSTITUTED AS SUBSECTION 43(4);

D) THAT SUBSECTION 43(4) BE SUBSTITUTED AS SUBSECTION 43(1) AND AMENDED AS FOLLOWS:

> (1) WHERE THE AMOUNT WHICH THE WORKER WAS EARNING BEFORE THE ACCIDENT HAS NOT BEEN DIMINISHED THE BOARD MAY PAY COMPENSATION WHERE SUCH WORKER HAS SUFFERED A PERMANENT INJURY WHICH, IN THE OPINION OF THE BOARD, *IS CAPABLE OF IMPAIRING HIS EARNING CAPACITY*.

E) THAT SUBSECTION 43(3) BE SUBSTITUTED AS SUBSECTION 43(2).

F) TO FURTHER ILLUSTRATE:

> 43(1): BECOMES 43(3) WITH AMENDMENT;
>
> 43(2): BECOMES 43(4);
>
> 43(3): BECOMES 43(2); AND,
>
> 43(4): BECOMES 43(1) WITH AMENDMENT.

SECTION 44 - TEMPORARY TOTAL/PARTIAL DISABILITY

The Committee, in recognition of the obvious need for a more realistic minimum payment in circumstances as are contemplated in this Section, are prepared to recommend the following amendments.

RECOMMENDATION L-50

SECTION 44

(A) SECTION 44(3). DELETE, "$60" WHERE IT APPEARS IN LINE THREE AND SUBSTITUTE WITH $100".

(B) SECTION 44(3). DELETE, "OR WHERE HIS AVERAGE EARNINGS ARE LESS THAN $60 PER WEEK, THE AMOUNT OF SUCH EARNINGS;".

(C) SECTION 44(4) - REPEAL.

SECTION 45 - COMPUTATION OF AVERAGE EARNINGS MAXIMUM RATES

At page six of this report we have illustrated the Maximum Compensable Yearly Salary (MCYS) that is in effect in each of the jurisdictions.

The MCYS is the maximum annual salary rate that compensation may be calculated on, regardless that a worker, in fact, may be earning in excess of that set amount at the time of a claim. In P.E.I. the MCYS is set at $23,000 and the maximum average annual earnings which a worker may be compensated is then 75% of that $23,000 or $17,250.

Seven of the eleven jurisdictions provide for automatic annual increases to their MCYS in their legislation. Prince Edward Island however provides for increases to its' MCYS in ad hoc fashion, as per Section 45(1) of the Act and thereafter set out in regulation.

A number of presenters encouraged this Committee to recommend an increase in the MCYS and to provide for a formula for annual improvement to the MCYS.

Some of the comments made by presenters is as follows:

> "Compensation is based on 75% of a worker's average earnings - up to a maximum of $23,000. This is not adequate compensation. All of Section 40 (prior to revision to statute - now Section 38) is inadequate in its level of benefits. The widow/widower benefit of $450, the dependent child benefit of $100, are inadequate unless it is our intent to see disabled workers and their families seeking help from welfare agencies."

> ". . . we believe that the current maximum amount (MCYS) set as a limitation in the calculation of compensation should be drastically increased. At $23,000, it is the lowest in the country by far. We suggest a maximum amount equivalent to the average of the maximum amounts set by the other 11 workers' compensation systems in Canada. At the current time, this average stands at just over $37,500."

> "There should be no ceiling on the amount of benefit received to replace lost income . . . Payments should be based on the loss of all income from the time of injury, etc."

In addition to those recommendations which the committee has received in regard to the MCYS, we, as well, received comment and recommendations with regard to the percentage of the wage base to be utilized in the calculation of benefits and to revert to the dual award system.

After careful consideration and examination of the pros and cons of reverting to the dual award system, **THIS COMMITTEE IS NOT DISPOSED TO RECOMMENDING THE DUAL AWARD SYSTEM AND IS CONTENT TO RECOMMENDING THAT THE PRESENT SYSTEM OF COMPENSATING INJURED WORKERS BE CONTINUED**.

In some jurisdictions, the compensation to be paid an injured worker is calculated as a percentage of gross earnings. Such is the case in Prince Edward Island. Other jurisdictions, on the other hand, utilize a percentage of a figure estimated to represent the earnings of the workers' net income.

In regard to this matter, the Committee is impressed with the position adopted by the Honourable Mr. Justice Roach in his report on the Ontario legislation, May 31, 1950 at Page 27:

> "It was suggested that the percentage, whatever it might be, should be applied to the "net" earnings of the worker rather than the "gross". I do not agree. The worker's obligations to the State, as represented by income tax and unemployment insurance, varies according to their stations in life and their total earnings. Those obligations have no relation to the debt which industry owes them in the event of their injury. That debt is related only to their loss of gross earnings, and the fact that the State may relieve them from those obligations when they are receiving compensation instead of wages has no relation to the respective rights and liabilities of the employee and the employer.
>
> That suggestion arose out of a discussion during the hearings before me of the "before" and "after" financial position of an injured worker.
>
> This subject has been before the courts both in England and in Ontario. In England in the case of Jordan v. Limmer & Trinidad Lake Asphalt Co. Ltd., and another, reported in 1946, All England Reports, page 527, it was held that "in assessing the amount of special damage to be awarded for loss of earnings due to absence from employment as a result of personal injuries by accident no deduction should be made in respect of income tax to which the plaintiff would have been liable if he had been able to continue in employment".
>
> In Ontario in the case of Bowers et al. v. J. Hollinger & Co. Limited et al reported in 1946 Ontario Reports, page 526, it was held that "in assessing damages for loss of wages resulting from physical injuries, the basis of assessment is the plaintiff's gross wages, without taking into consideration deductions which might have been made by the employer on account of income tax or unemployment insurance".

I conceive the question to be simply this: In addition to the other benefits given to the worker by the Act, what percentage of his earnings should he also receive in order that the employer's debt to him be satisfied, remembering, as we always must, that the scheme of the Act includes some contribution by labour. As I put it to the parties during our discussions - and they all agreed - my approach to the problem should be this: figuratively I hold the scales of justice in my hands; into the employer's pan of the scale I put the debt that industry owes to injured workmen and into the other pan, viz., the workmen's, I put the benefits given to them, and also their contribution, and if the scales are then in balance, the debt is paid. If they are not, there is something wrong with the Act.

What then are the factors that make up the debt? I put them in the employer's pan of the scales. They are:

1. Medical expenses made necessary by the injury.

2. Loss of earnings. These include:

    (a) Present earnings.

    (b) Prospective earnings. These terminate when the worker, due to age or illness or accident outside his employment, must lay down his tools and work no longer. They may be enhanced by improvement in his skill or general increases in wage rates. On the other hand they may be adversely affected by labour disputes resulting in strikes or lock-outs, or by other periods of unemployment.

3. Pain and suffering.

Then what does the Act put into the worker's pan of the scales? There it puts the following:

1. Full medical aid.

2. Seventy-five percent of the worker's average earnings.

Those payments continue as long as the disability lasts, and if it continues for life, then the payments likewise continue for life, notwithstanding that had the worker not been injured, age, or illness or accident outside industry might have cut down or entirely extinguished his earning power. We know that in every year the average worker loses some time from his job due to his own illness or illness in his family. We know too that inevitably there comes a time when workers, due to advanced years and the frailties of age must lay down their tools and work no longer. Where compensation is payable the Act ignores those factors. We are accustomed to what are called slack times, but the Act also ignores that factor.

The compensation is paid even though the accident may have been caused solely or partly by the workman's own negligence. It is also paid in cases of serious disablement, even though the accident was caused by the serious and wilful misconduct of the workman. The payments are certain, they are not contingent upon the present or future financial position of the employer.

3. The full cost of rehabilitation.

4. The workman's contribution to the scheme of the Act. This includes the following:

   (a) He foregoes compensation for the waiting period in those cases where the disability does not last that long.

   (b) He bears twenty-five per cent of lost earnings, but obviously lost earnings could continue only for the period when he would otherwise be earning.

   (c) He foregoes compensation for pain and suffering.

Are the scales now in perfect balance? I cannot say. No one can. Perfect compensation is impossible to achieve. All I can hope to do on this inquiry is to determine whether they are so far out of balance as to result in a substantial injustice to the employer or the workman. If they are, then something should be added to or taken from the employee's pan of the scale. I am not satisfied that they are so far out of balance as to require such adjustment. In reaching that conclusion any doubts I have had I have resolved in favour of the worker."

THE COMMITTEE IS NOT PREPARED TO RECOMMEND A CHANGE FROM THE PRESENT PRACTICE OF CALCULATING COMPENSATION AT 75% OF GROSS.

The Committee is convinced that there is a desperate need to adopt a formula whereby the MCYS advances automatically in recognition of increasing salary scale levels in this modern society.

At present P.E.I., at $23,000, finds itself considerably behind the next lowest jurisdiction, i.e. Nova Scotia at $36,000 and even farther behind its neighbour Newfoundland at $45,500. On the other hand, the National average stands at $42,345 or $19,345 ahead of P.E.I.

RECOMMENDATION L-51

(A) THAT SECTION 45 OF THE ACT BE AMENDED TO PROVIDE A FORMULA FOR THE AUTOMATIC ANNUAL ADJUSTMENT OF THE MAXIMUM COMPENSABLE YEARLY SALARY (MCYS).

(B) THAT THE FORMULA BE AS FOLLOWS:

THE AVERAGE WEEKLY EARNINGS (INDUSTRIAL AGGREGATE) FOR P.E.I. AT JUNE 30 OF EACH YEAR, FOR THE PREVIOUS TWELVE MONTHS, AS PUBLISHED BY STATISTICS CANADA, EMPLOYMENT AND EARNINGS HOURS, 72-002, TABLES 2.1 AND 2.2, MULTIPLIED BY 1.5, ROUNDED TO THE NEAREST $1,000, EQUALS THE MCYS FOR THE CALENDAR YEAR COMMENCING JANUARY 1 OF EACH SUBSEQUENT YEAR.

PUT ANOTHER WAY: ANNUAL AVERAGE WEEKLY EARNINGS AT JUNE 30 × 1.5 = MCYS AT JANUARY 1 IN THE YEAR FOLLOWING.

(**NOTE:** USING JUNE 30 AS THE BASE DATE FOR THE CALCULATION ALLOWS FIVE (5) MONTHS NOTICE TO THE EMPLOYERS PRIOR TO IMPLEMENTATION.)

(C) IN RECOGNITION OF THE FACT THAT THE PRESENT MCYS ($23,000) IS SIGNIFICANTLY LESS THAN THE FORMULA WOULD PROVIDE, IF IT WERE PRACTICED PRESENTLY, THE COMMITTEE IS RECOMMENDING A CATCH-UP FEATURE, VIA A PHASING-IN APPROACH, SO AS TO ACHIEVE THE DESIRED MCYS BASE IN THREE YEARS, WE ESTIMATE.

THE AVERAGE WEEKLY WAGE FOR P.E.I. AT DECEMBER 31, 1989 WAS $396.85 (STATISTICS CANADA). THEREFORE THE AVERAGE ANNUAL WAGE IN P.E.I. AT DECEMBER 31, 1989 WAS $396.85 × 52 = $20,636 × 1.5 = $31,000 (ROUNDED TO THE NEAREST $1,000) OR $8,000 ABOVE THE PRESENT DAY MCYS.

WE ARE RECOMMENDING THAT THE PRESENT DAY MCYS BE INCREASED BY INCREMENTS OF $4,000 PER YEAR, EFFECTIVE JANUARY 1 OF EACH YEAR, UNTIL THE IDENTIFIED MCYS IS ACHIEVED WE ESTIMATE IN 1993.

FOR EXAMPLE:

THE MCYS FOR 1991 WOULD BE $23,000 + 4,000 OR $27,000;

THE MCYS FOR 1992 WOULD BE $27,000 + $4,000 OR $31,000;

THE MCYS FOR 1993 WOULD BE $31,000 PLUS THE NECESSARY AMOUNT TO ACHIEVE THE MCYS AS PER THE RECOMMENDED FORMULA, i.e. ANNUAL AVERAGE WAGE AT JUNE 30, 1992 MULTIPLIED BY 1.5.

SECTION 46 - CONSIDERATION TO BENEFITS PROVIDED AN EMPLOYEE BY THE EMPLOYER DURING DISABILITY.

This particular Section of the Act created considerable confusion and doubt in the minds of Committee members, as to its' intent and appropriateness.

Our research does indicate that a similar provision exists in the Ontario legislation and some other jurisdictions; nevertheless, a payment by the employer of termination pay or vacation pay is not deductible from the compensation payable to a worker.

Board advisors to the Committee inform us that they interpret this Section to the benefit of the worker, in that such payments are considered part of the workers total wage compensation package and are utilized in determining compensation payments.

The Committee is informed by the Board advisors that, in their memory, this Section has never been used to reduce the amount of compensation payable to an injured worker; nor, have they ever, in their memory, paid the employer out of the accident fund in a manner suggested or described by Section 46 (2).

The Committee finds it difficult to reconcile the Board's interpretation and practices with regard to Section 46. The language of this Section does not, it appears to us, support the Board's interpretation or practice, as it was explained to the Committee.

We are convinced that where any employer, by way of a Collective Agreement or a contract of employment, has made an agreement with his employees to provide any benefit or right to workers during periods of compensable injury, then that employer should be compelled to provide such benefit or right, at his own cost and without re-imbursement from the accident fund, as we feel is suggested herein.

The Committee feels that it is a regressive measure, in a collective scheme like Workers' Compensation, to permit some employer to underwrite his costs associated with making such arrangements, and particularly when such re-imbursement comes from the *Collective's* funds.

In addition we are convinced that an unscrupulous employer, while negotiating certain benefits with his employees could, while being aware of this provision, grant the employee's request for such benefits, knowing that he may recoup his costs later on. In essence then, because the collective bargaining process is a process of give and take at the bargaining table, the employees would give to gain such a benefit in negotiations; and, give again by having their compensation reduced by the amount reimbursed the employer. Therefore, the employee would be liable to pay twofold in the exchange.

Neither the Workers' Compensation Act, nor the Committee, by way of its' recommendations, should be permitted to interfere in the collective bargaining process, or otherwise, so as to undo any such agreements as are made between employers and employees under the provisions of other legislation, e.g. the *Labour Act*.

Once again, we are reminded that the *"Historic Compromise"* set out that "compensation must be paid for by employers as an ordinary cost of doing business" and that "compensation must be based on collective liability".

On the other side of the coin is a potential for widespread claims of this nature, which if it were to occur on a grand scale, could result in excessive workload at the Board in investigating and responding to a large number of claims; and as well, there would be the potential for jeopardizing the accident funds ability to respond to workers claims at the time of injury. Were this to occur it could result in increasing liabilities at the Board and therefore require an increase in the assessments to all the employers in a class or classes.

RECOMMENDATION L-52

THAT SECTION 46(1) AND (2) BE REPEALED.

RECOMMENDATION L-53

> SECTION 47(9) PENALTY - EVERY EMPLOYER WHO FAILS TO GIVE ANY NOTICE, MAKE ANY REPORT OR TO FURNISH PARTICULARS OF ANY ACCIDENT OR CLAIM REQUIRED BY THIS SECTION, UNLESS EXCUSED BY THE BOARD ON THE GROUND THAT THE REPORT FOR SOME SUFFICIENT REASON COULD NOT HAVE BEEN MADE, IS LIABLE TO A PENALTY TO BE IMPOSED BY THE BOARD.

INFLATION ADJUSTMENT

As has been indicated earlier in the report, there has been much comment, concern and recommendation expressed by presenters with regard to indexing compensation payments to offset the negative impact of inflation on these fixed compensation amounts.

Research indicates that a number of jurisdictions do adjust compensation payments for inflation automatically at intervals of six months or one year. Others adjust ongoing benefits at regular or irregular intervals by order in Council or statutory amendment.

British Columbia, Nova Scotia, Yukon, Saskatchewan and Quebec all provide for Consumer Price Index adjustments to benefits directly.

P.E.I. has made adjustments to widow/widower/dependent pensions and permanent total/partial pensions at irregular intervals from time to time. On average, these adjustments have occured every four years and the adjustment averaged 5% per year, or $10.00 per month, which ever was greater.

The problem with the practice of irregular adjustments, as we see it, resides in the fact that such adjustments do not generally keep pace with inflation, consequently the level of benefits tends to deteriorate, and the irregularity of making improvements does not allow for easy budget planning by injured workers or dependents.

The Committee is convinced that all continuing benefit payments received by injured workers or their dependents should be adjusted annually by the Consumer Price Index for Charlottetown/Summerside.

We are convinced, as well, that proper planning and investment of funds, by the Board, will offset the need for any significant increases in assessments as a result of our recommendation.

RECOMMENDATION L-54

> THAT A NEW SECTION BE INCLUDED IN THE LEGISLATION WHICH SHOULD PROVIDE FOR AN ANNUAL ADJUSTMENT TO *ALL* ONGOING BENEFITS BEING PROVIDED BY THE WORKERS' COMPENSATION BOARD

TO *ALL* INJURED WORKERS' AND/OR *ALL* DEPENDENTS OF DECEASED OR INJURED WORKERS. SUCH ADJUSTMENT SHALL TAKE AFFECT ON JANUARY 1 OF EACH YEAR AND SHALL BE EQUAL TO THE CONSUMER PRICE INDEX FOR CHARLOTTETOWN/SUMMERSIDE FOR THE TWELVE MONTH PERIOD EXPIRING ON DECEMBER 31 OF EACH PRECEEDING YEAR.

DIVERSION AND SUSPENSION OF BENEFITS

There is some concern that Section 48(2) of the Act is in conflict with the provisions of Section 15 of the *Canadian Charter of Rights*. Our research would indicate, to our satisfaction, that such is the case.

To quote from the *"Report of the Workers' Compensation Review Committee"*, May 1987, Manitoba at Page 342:

> "There are several sections in our Workers' Compensation Act which empower the Board, in certain circumstances, to suspend, withhold, or divert the payment of benefits. In light of s. 15 of the Charter, some or all of these may be challengeable.
>
> It is submitted that insofar as mental hospital patients are concerned, this clearly violates s. 15 (1) of the Charter, which expressly forbids discrimination on the basis of mental disability.
>
> As for those recipients of workers' compensation who are subsequently incarcerated in jail, this discretionary power to withhold or divert payments also seems to be a clear breach of s. 15, especially given the recent success of using s. 15 to restore prisoners' rights to vote. The paternalistic Victorian moralism of provisions such as these is staggering, especially when it is considered that these benefits are compensatory in nature, based on the right to be so compensated, and not some kind of goodwill, charity handout given upon the whim of the more fortunate."

The Committee is convinced that such persons, as a right, should continue to receive their entitlement. However, it may be necessary, so as to ensure that any dependents are cared for or that the benefit is not abused to the detriment of the entitled recipient, that the benefit should be cared for, to the benefit of the recipient, by a competent person(s) or the Board.

RECOMMENDATION L-55

SECTION 48(2):

IF AN INJURED WORKER WHO IS ENTITLED TO COMPENSATION IS COMMITTED TO A MENTAL INSTITUTION OR INCARCERATED IN ANY JAIL OR PRISON, COMPENSATION SHALL CONTINUE TO BE PAYABLE, HOWEVER

THE BOARD MAY PAY ANY PART OF THE COMPENSATION TO ANY DEPENDENT OF THE INJURED WORKER OR TO SUCH PERSONS AS IN THE OPINION OF THE BOARD ARE BEST QUALIFIED IN ALL THE CIRCUMSTANCES TO ADMINISTER THE PAYMENTS OR THE BOARD MAY ADMINISTER THE PAYMENTS TO THE BENEFIT OF THE INJURED WORKER AND ANY DEPENDENTS.

NEVERTHELESS, A COMFORT ALLOWANCE OF 20% OF THE BENEFIT, TO A MAXIMUM OF $100.00, SHALL BE PAID OUT OF EACH PERIODIC PAYMENT FOR THE USE OF THE INJURED WORKER WHERE THE BENEFIT IS BEING ADMINISTERED BY ANOTHER.

SECTION 50(2)

The Committee has been advised that it has been the consistent practice of the Board to provide compensation, under these circumstances, computed on the workers earnings at the time of the re-opening of the claim, instead of at the date of the accident. This practice of the Board, in essence, recognizes the higher wage level that generally would be the case in today's economy, in computing the compensation to be paid. Such a practice, as well, recognizes the inflationary nature of our economy and fairly compensates the worker within the scheme of Workers' Compensation.

We stand convinced that the existing practice is fair and appropriate under the circumstances and we feel that the practice should, in fact, be enshrined in the legislation.

RECOMMENDATION L-56

SECTION 50(2)

WHERE A CLAIM IS RE-OPENED AFTER TWO YEARS HAVE LAPSED FROM THE DATE OF THE ACCIDENT, THE BOARD, WHERE IT DETERMINES THAT AN INCREASE IN COMPENSATION IS JUSTIFIED, SHALL CONTINUE TO PAY THE INJURED WORKER THE COMPENSATION WHICH WAS AWARDED AT THE TIME OF THE ORIGINAL CLAIM; AND, IN ADDITION, SHALL PAY THE INJURED WORKER COMPENSATION ON THE IMPROVED PORTION OF THE RE-OPENED CLAIM, COMPUTED ON HIS AVERAGE EARNINGS AT THE TIME OF THE RE-OPENING OF THE CLAIM ON THE SCALE AS PROVIDED BY THE ACT AT THE TIME OF THE RE-OPENING, OR SHALL PAY THE INJURED WORKER COMPENSATION COMPUTED ON HIS AVERAGE EARNINGS AT THE TIME OF THE ACCIDENT ON THE SCALE AS PROVIDED BY THE ACT AT THE TIME OF THE RE-OPENING, WHICHEVER IS OF GREATER BENEFIT TO THE INJURED WORKER.

ACCIDENT FUND AND ASSESSMENTS

Much has been said by presenters, obviously employers and employer organizations, with regard to this particular Section of the Act.

Some selected comments and recommendations are as follows:

> "There are not enough classification categories."
>
> "Rates should be lower for office workers as they are under much less risk."
>
> "(That) there be established an Advisory Board, comprised solely of employers or representatives of employers associations, that acts in an advisory capacity in the establishment and the review of the various employer classifications (for) the establishment of rates."
>
> "P.E.I.'s rates are comparatively higher than these cited (other jurisdictions) examples."
>
> "Sufficient funding for fair and adequate compensation must be a basic commitment of WCB's. Workers' Compensation Boards of Canada must set assessment rates to fully pre-fund all of the costs of compensation. Failure to do so undermines the integrity of the historic compromise in which the compensation system is based. Underfunding, experience rating, and other gimmicks used to undermine fair compensation must end if the system is to remain viable."

RECOMMENDATION L-57

(A) SECTION 54(1) - ADD: "IN FIXING CLASSES, THE BOARD SHALL, IN SO FAR AS POSSIBLE, DESIGN THEM ON THE MODEL OF THE "STANDARD INDUSTRIAL CLASSIFICATION SYSTEM" AS PUBLISHED BY STATISTICS CANADA."

(B) SECTION 54(2) - THE BOARD MAY BY ITS POLICY OR BY-LAW REARRANGE SUCH CLASSES, AND TRANSFER ANY INDUSTRY TO ANY OTHER CLASS.

(C) SECTION 54(3) - FOLLOWING THE WORDS "CHIEF DEPARTMENT" IN LINE FOUR, DELETE THE WORDS, "OR MAY DIVIDE THE INDUSTRY INTO TWO OR MORE DEPARTMENTS, ASSIGNING EACH TO ITS PROPER CLASS."

[NOTE; THE COMMITTEE IS ADVISED THAT THERE HAS NOT IN THE PAST BEEN ANY NUMBER OF INDUSTRIES DIVIDED INTO TWO OR MORE DEPARTMENTS AND ASSIGNED TO SEPARATE CLASSES. THERE EXISTS A FALSE IMPRESSION BY INDUSTRY THAT TO DO SO, WILL CREATE A LOWER RATE FOR A PARTICULAR SEGMENT OF THE UNDERTAKING, THEREBY REDUCING THE COST OF ASSESSMENT OVERALL. ON THE OTHER HAND, TO TRANSFER A SUBSTANTIAL PART OF AN EXISTING CLASS TO A LOWER RATED CLASS WILL RESULT IN A NECESSARY INCREASE TO THE ASSESSMENT RATE OF THE CLASS, WHOSE SIZE HAS

BEEN DECREASED, IN ORDER TO MAINTAIN ITS FINANCIAL LIABILITY, THEREFORE OFFSETTING ANY SAVINGS. THE COMMITTEE STANDS CONVINCED THAT ANY SUBSTANTIAL REARRANGING OF CLASSES, IN THIS MANNER, WILL RESULT IN DE-STABLIZING THE FINANCES OF THE SYSTEM OR CREATE THE NEED TO ADJUST RATES THEREBY NEGATING ANY EFFECT.]

MERIT AND DEMERIT RATING SYSTEM

The Committee did receive comment and recommendation as it relates to merit or experience rating.

Comment ranged between the two positions of being supportive of such a concept, to being opposed. Selected commentary of presenters follows:

> "An experience rating system or other similar merit system be implemented as an equitable assessment system which recognizes good practices and performances."
>
> "Limit the percentage of merit to provide for protection from excessive assessment."
>
> "Firms and businesses that show a record of improved workplace safety and a reduction in the number of claims made by employees should be rewarded through a Merit System."
>
> "(That) this National Union continues its strong opposition to experience rating."
>
> "A review of assessment policy should reflect lower rates for injury free employers and higher rates for those employers with a high incident rate."

Research does indicate that legislation in the other jurisdictions does provide for a system of experience rating and that most Boards do operate experience rating systems, at least in some classes.

There is evidence that, even though there may exist a provision for a system of experience rating, such does not necessarily mean that experience rating is the practice.

P.E.I. is an example of the foregoing statement. Section 56(3) does provide for a Merit and Demerit rating system. However, the Act does not design a system and, we are advised, that experience rating is not the present practice of the Board.

A number of reasons are cited for this fact. Firstly, the rating system would have to be designed to permit the compensation system to function without interfering in its' ability to meet its' costs; secondly, the rating system would have to be designed to include criteria or a methodology for measuring merit; and, finally, such a rating system would require the necessary staff to monitor and control the claims made on it, thereby increasing the cost of the administration of the compensation system itself.

Supporters of the concept of experience rating suggest that such systems operate so as to motivate employers to provide safe work places and practices, in the effort to keep their compensation costs under control.

Opponents, on the other hand, suggest that workers suffer in such a system because employers encourage and harass employees from filing claims in accident situations and that employers tend to appeal worker claims more frequently in an effort to keep claims to a minimum.

As one employee organization stated in its submission to us:

> "It is necessary that there be a greater involvement of employees in health and safety programmes at the work site through safety committees and worker representatives and more emphasis on the right-to-know and the right to refuse unsafe or unhealthy work. Emphasis should be placed on accident investigations to determine corrective measures that will prevent recurrences. When hazards are identified, engineering controls at the source should be required. We reject the concept of experience rating as a gimmick that promotes controlling claims costs after the injury has occurred and diverts resources away from the real prevention measures that are designed to eliminate or control hazards before the injury occurs."

The Committee is convinced that a *properly administered* system of merit and demerit is appropriate, in the best interests of motivating employers to provide safe and healthy workplaces; which, in turn, should reduce the number of accidents in the workplaces of the province, thereby reducing the pain and suffering of workers.

RECOMMENDATION L-58

THAT SECTION 56(3) BE AMENDED TO PROVIDE SPECIFIC CRITERIA IN DETERMINING MERIT OR DEMERIT, AS THE CASE MIGHT BE.

(A) IN DETERMINING MERIT FOR PURPOSES OF A REBATE, THE BOARD SHALL TAKE INTO CONSIDERATION THE FOLLOWING CRITERIA:

(i) AN EMPLOYER SHALL APPLY FOR A MERIT REBATE ON A FORM SUPPLIED BY THE BOARD FOR SUCH PURPOSE.

(ii) UPON RECEIPT OF A REQUEST FOR A MERIT REBATE, THE BOARD SHALL REQUEST THAT AN AUDIT OF THE EMPLOYER'S HEALTH AND SAFETY PRACTICES SHALL BE CARRIED OUT BY OFFICIALS OF THE OCCUPATIONAL HEALTH AND SAFETY DIVISION OF THE DEPARTMENT OF LABOUR.

(iii) MERIT SHALL BE DETERMINED BASED ON THE FINDINGS OF THE AUDIT AND RELATED TO SUCH MATTERS AS: THE EXISTENCE OF AN OCCUPATIONAL HEALTH AND SAFETY COMMITTEE OR SAFETY OFFICERS AT THE EMPLOYERS WORK PLACE(S); THE EXISTENCE OF A FORMAL HEALTH AND SAFETY TRAINING PROGRAM; THE PREVALENCE OF TRAINING IN A RECOGNIZED FIRST AID PROGRAM; FIRST AID EQUIPMENT AT HAND AND SO FORTH.

(iv) IN ADDITION, A TWO TO THREE YEAR PERIOD SHALL BE ASSESSED AS TO THE CLAIMS EXPERIENCE OF THE EMPLOYER. SUCH SHOULD SHOW AN APPRECIABLE DECREASE IN INCIDENTS OF CLAIMS OR ACCIDENTS.

(v) THE RANGE OF ANY REBATE SHALL NOT BE LESS THAN 5%, NOR GREATER THAN 10%, IN ANY YEAR AND THAT THE REBATE BE BASED ON THE ASSESSMENT OF THE EMPLOYER IN THAT YEAR.

(vi) THE ADOPTED MERIT SYSTEM PROGRAM SHOULD BE ACTUARILY SOUND AND THEREFORE THE BOARD'S ACTUARIES SHOULD BE INVOLVED IN ITS DEVELOPMENT.

(vii) ONLY THOSE EMPLOYERS WHO PAY AN ANNUAL ASSESSMENT OF $5,000.00 OR MORE, SHALL BE CONSIDERED FOR A MERIT REBATE.

(**NOTE:** THE COMMITTEE IS CONCERNED THAT ANY EXPERIENCE RATING SYSTEM WHICH MAY BE ADOPTED IS BASED ON SEVERAL PRINCIPLES OF EVALUATION AND ELIGIBILITY. WE ARE COGNIZANT OF THE TRIALS AND TRIBULATIONS ASSOCIATED WITH ONTARIO'S ATTEMPTS TO INTRODUCE A VIABLE MERIT RATING SYSTEM OVER MANY YEARS [SEE REPORT OF THE HONORABLE MISTER JUSTICE ROACH - MAY 31, 1950 - APPENDIX "G", ATTACHED].

ALSO IT MAY BE NECESSARY, IN THE SHORT TERM, TO INCREASE THE STANDARD ASSESSMENT RATE OF ANY CLASS, THAT IS TARGETED BY THE BOARD FOR A MERIT REBATE SYSTEM, SO AS TO ENSURE THE FINANCIAL STABILITY OF THE COMPENSATION SYSTEM. SUCH INCREASE, OF COURSE, SHOULD BE MINIMAL AND BE DETERMINED BY AN ACTUARIAL STUDY.)

(B) WHERE, AFTER INVESTIGATION, THE BOARD DETERMINES THAT:

(i) SUFFICIENT PRECAUTIONS ARE NOT TAKEN BY AN EMPLOYER FOR THE PREVENTION OF INJURIES AND INDUSTRIAL DISEASE,

(ii) THE WORKPLACE(S) OF THE EMPLOYER OR THE WORKING CONDITIONS ARE CONSISTENTLY UNSAFE,

(iii) THE EMPLOYER FAILS OR REFUSES TO COMPLY WITH ANY REGULATIONS, ORDERS OR DIRECTIVES ISSUED BY THE BOARD OR BY THE OCCUPATIONAL HEALTH AND SAFETY DIVISION, DEPARTMENT OF LABOUR,

THE BOARD MAY ASSESS AND LEVY ON THE EMPLOYER ANY ADDITIONAL ASSESSMENT DETERMINED BY THE BOARD AND MAY COLLECT THE ADDITIONAL ASSESSMENT IN THE SAME WAY AS AN ASSESSMENT IS COLLECTED. **OR**, THE BOARD MAY EXERCISE ITS RIGHTS UNDER ANY OTHER SECTION OF THE ACT IN THIS REGARD.

RECOMMENDATION L-59

SECTION 65(2) - THE PROVINCE OF PRINCE EDWARD ISLAND AND THE BOARD OF ASSESSORS FOR EVERY MUNICIPALITY SHALL YEARLY WITHIN TEN DAYS AFTER THE COMPLETION OF THE ASSESSMENT ROLL, MAKE A RETURN TO THE BOARD UPON FORMS PROVIDED BY THE BOARD, SHOWING THE NAMES, ADDRESSES, NATURE OF BUSINESS, AND USUAL NUMBER OF EMPLOYEES, IF KNOWN, OF ALL EMPLOYERS OR LABOR CARRYING ON ANY INDUSTRY OR BUSINESS OTHER THAN A FARMING OR MERCANTILE BUSINESS WITHIN THE JURISDICTION OF THE ASSESSOR, AND ANY OTHER INFORMATION THE BOARD MAY REQUIRE.

SECTION 65(3) - WITHIN THREE DAYS AFTER THE GRANTING OF ANY BUILDING PERMIT IN ANY MUNICIPALITY, WRITTEN NOTICE THEREOF SHALL BE GIVEN TO THE BOARD BY THE PERSON WHOSE DUTY IT IS TO KEEP A RECORD OF THE PERMITS.

RECOMMENDATION L-60

SECTION 66(2) - FAILURE TO COMPLY WITH ACT BY EMPLOYER, PENALTIES

ANY EMPLOYER WHO REFUSES OR NEGLECTS TO MAKE OR TRANSMIT ANY PAYROLL RETURN OR OTHER STATEMENT REQUIRED TO BE FURNISHED BY HIM UNDER SECTION 65, OR WHO REFUSES OR NEGLECTS TO PAY ANY ASSESSMENT, SPECIAL OR SUPPLEMENTARY ASSESSMENT, OR THE PROVISIONAL AMOUNT OF ANY ASSESSMENT, OR ANY INSTALMENT OR PART THEREOF, OR WHO REFUSES OR NEGLECTS TO REPORT TO THE BOARD HIS ESTIMATE OF PAYROLL SHALL, IN ADDITION TO ANY PENALTY OR OTHER LIABILITY TO WHICH HE MAY BE SUBJECT, PAY TO THE BOARD A PENALTY FOR EACH WEEK THAT THE RETURN PAYMENT OR REPORT IS NOT MADE AND THE PAYMENT OF SUCH AMOUNT OR AMOUNTS MAY BE ENFORCED IN THE SAME MANNER AS THE PAYMENT OF AN ASSESSMENT MAY BE ENFORCED, BUT THE AMOUNT PAYABLE UNDER THIS SUBSECTION DOES NOT EXCEED AN AMOUNT WHICH THE BOARD CONSIDERS JUST OR REASONABLE UNDER ALL THE CIRCUMSTANCES.

RECOMMENDATION L-61

SECTION 70(2) - OBSTRUCTION OF INSPECTION

EVERY PERSON WHO OBSTRUCTS OR HINDERS THE MAKING OF ANY INSPECTION OUTLINED IN SUBSECTION (1) OR WHO REFUSES TO PERMIT ANY SUCH INSPECTION TO BE MADE IS LIABLE ON SUMMARY CONVICTION TO A FINE AND IN DEFAULT OF PAYMENT TO IMPRISONMENT OR TO BOTH.

SECTION 70(4)

Due to the fact that the Occupational Health and Safety Division of the Department of Labour has assumed responsibility for health and safety in the workplace, a function formerly the responsibility of the Board, the Committee feels it necessary to recommend an amendment to this section of the Act.

RECOMMENDATION L-62

SECTION 70(4) - WHERE AN ACCIDENT CAUSING INJURY TO A WORKER IN RESPECT OF WHICH COMPENSATION IS PAYABLE HAS OCCURRED AND WHERE, IN THE OPINION OF THE BOARD THE ACCIDENT WAS DUE ENTIRELY OR MAINLY TO THE FAILURE OF THE EMPLOYER TO COMPLY WITH THE DIRECTIONS OF THE OCCUPATIONAL HEALTH AND SAFETY DIVISION, DEPARTMENT OF LABOUR, OR OF THE BOARD OR THE REGULATIONS TO THIS ACT, THE BOARD MAY LEVY AND COLLECT FROM THE EMPLOYER AS A CONTRIBUTION TO THE ACCIDENT FUND, A SUM NOT EXCEEDING ONE-HALF THE AMOUNT OF THE COMPENSATION PAYABLE IN RESPECT OF THE INJURY, AND THE PAYMENT OF SUCH SUM MAY BE ENFORCED IN THE SAME MANNER AS THE PAYMENT OF AN ASSESSMENT.

PAYMENT OF ASSESSMENTS

One employer organization made a strong recommendation to the Committee with regard to assessment billing procedures:

> "Concern has been expressed recently by the Members of (our organization) regarding the assessment billing procedure under the present system, employers are assessed and billed at the beginning of the year and their total assessment is due and payable within thirty days. Any outstanding balance is subject to an interest charge based on an annual rate of 18 percent. For many companies the annual assessment payment represents a lot of money and many find it difficult to make the large lump sum payment.
>
> (Our organization) would recommend that a system of assessment billing be put in place that would require quarterly payments rather than one single yearly payment. Circumstances within companies do change during the year and most employers would find quarterly payments easier to manage based on existing cash flow situations. We feel very sure (our Members) are not the only ones that have problems with the current billing system.

The other side of the argument was presented by an employee organization as follows:

> "Pre-funding" is the (Meredith) principle under which Boards raise from employers in any given year, sufficient funds to cover costs for that year plus all future costs arising

> out of injuries and illnesses occurring in that year. Naturally, the Board has income from its investments in that year and it will also incur liabilities, the purpose of the funding being to meet expenditures in that year and to cover the estimated liabilities, taking into account both a reserve factor and the discount rate."

The Board advises the Committee that due to the size of its' base source of funding, it is critical to the viability of the accident fund that the Board be enabled to "pre-fund" the system as much as possible, so as to be able to meet the demands of claims; and, so as to offset, to the best of its ability, any significant liabilities.

The Committee has some sympathy for both sides of the issue and are prepared to recommend as follows:

RECOMMENDATION L-63

SECTION 61

ADD: NEVERTHELESS IN THE CASE OF EMPLOYMENT THAT IS OF A SEASONAL NATURE, IN THAT IT DOES NOT OPERATE AS A YEAR ROUND EMPLOYMENT GENERALLY, THE BOARD MAY ONLY COLLECT ASSESSMENTS HALF YEARLY OR QUARTERLY AS IT MAY DETERMINE NECESSARY.

INTEREST ASSESSED AGAINST DELINQUENT PAYMENTS SHALL NOT EXCEED THE PRIME BANK RATE PLUS 2%.

RECOMMENDATION L-64

SECTION 62 (2)

DELETE "$100" IN LINE SIX AND SUBSTITUTE WITH "$1000".

DISCLOSURE

A number of presenters made comment and recommendation on the matter of access to files and information disclosure.

It has been a long-standing practice of the Board to maintain a strict control over claimant files and only allowing for a Board employee to verbally review the file of a claimant with a claimant and/or the claimants representative. Direct access to a file was not permitted.

Comment from presenters followed this pattern:

"The employer should have access to the entire file."

"(The injured worker should have) full access to his or her files."

"(The) policies and practices of the Board MUST be public knowledge, allowing a claimant to see his/her file."

"Access by the employer to all information on a confidential basis."

"Employees and their representatives should have access to their own Workers' Compensation files."

Research does indicate that until most recently, boards as a general practice kept the files secret. Most recently there has been a trend favoring disclosure, at least to the injured worker.

The practice of disclosure and the degree of disclosure varies from jurisdiction to jurisdiction:

- Workers advisors (government officials) generally have access to workers files;
- Workers themselves, in most jurisdictions, do have access to their own files;
- In Ontario the Board is able to withhold any information in a file which the Board may feel would be harmful to anyone, other than the injured worker;
- Access by employers is a controversial matter, questions arise with regard to the degree of disclosure, if any, an employer should enjoy. The controversy, of course, relates to the nature of the information, i.e. being of a very personal medical nature. Another concern relates to disclosure enhancing the possibility of employer appeals and therefore contributing to adversarial proceedings.
- British Columbia and Alberta provide for the equal access to Board files by both the injured worker and his employer.
- Other jurisdictions, however, provide for a limited right of access to employers; and, some others provide for no right of access to employers.
- Attending physicians, as a general rule, are able to access Board files at their own request or, at the least, upon request of the injured worker.
- Some jurisdictions provide for the requirement of a notification to the injured worker, where an employer requests access to a Board file on the worker and the worker is provided with the opportunity to file an objection.
- Jurisdictions provide for protection against abuse of the disclosure privilege regarding any risk of harm to the worker, because of the misuse of any accessed information on the part of the employer

In the *Report of the Workers' Compensation Review Committee, Manitoba,* May 1987, that Committee makes the following comments on this most important matter, at pages 82 and 83:

> "In the past, access to the information contained in an injured worker's file had been a contentious issue. In 1983, The Workers Compensation Act was amended to give injured workers complete access to the files, including medical reports, with the exception of medical reports submitted by external physicians and surgeons prior to September 15, 1983. In order to gain access to those reports, the claimant must request them in writing from the doctor involved. The Board's Review Officer will assist with this. If consent is given by the doctor in question, then the report(s) will be released to the claimant. If consent is refused, or if the doctor is unavailable, then the claimant may appeal to an external appeal body for consideration. Originally, this was done by the Complaints Committee of the College of Physicians and Surgeons. At that committee's request, this procedure was changed. Currently, these appeals are heard by the Medical Access Committee, a committee of two doctors appointed by the Minister responsible for Workers' Compensation. From the perspective of injured workers and their representatives, this system appears to be working well. Employers are dissatisfied with the current legal framework, however. Many employers expressed their strong view that it was their right to have access to the claimants entire file, in order to properly prepare for an appeal. **We believe that the current right of access should not be broadened to include employers. As noted elsewhere in this Report, we are concerned that such involvement by employers is making an inquiry system into an adversarial one. We believe that the worker's right to confidentiality; regarding his/her medical treatment should, in an inquiry system, take precedence over any competing right to that information by employers. Employers should, however, be provided by the Board with a comprehensive statement as to the restrictions placed on the injured worker as a result of the work injury. As well as outlining the physical restrictions, such a statement should inform employers about the specific situations which should be avoided in order to prevent a worsening of the worker's condition or a recurrence of injury.**
>
> Current Board policy (Board Order 140/84) releases individual files only to assist the injured worker in appealing a decision. We consider this unnecessarily restrictive. **Injured workers should have full access to their files at any time - not only when they wish to formally appeal a decision.**
>
> It has also been brought to our attention by the Manitoba Federation of Labour, that in some cases not all of the material related to a particular claim will be kept physically with the file. This is the case when an appeal reaches the Board of Commissioners. Any written submissions made to the Board for the final appeal are filed separately, in the Administrative Offices of the Board. If, therefore, future appeals were to be made, the claimant, and his/her representative, would not have access to the complete file and would likely not even know that material was missing from the file. **It is our recommendation that this practice cease. All documents related to a claim should be filed together to ensure easy and complete access.**

> Lastly, on this topic, Board Order 141/84 specifies that only one copy of the file will be made available to the Claimant or his/her representative. We consider this to be unnecessarily restrictive. **Extra copies of the file should be made available to the claimant if needed.**"

The 1988 report entitled *"Workers' Compensation in Nova Scotia 'The Turning Point'"* had this brief comment regarding employer access to workers' files, at page 28:

> "The employer may not have access to medical information contained in an injured employee's compensation file."

This review committee (Nova Scotia), because of its great concern for maintaining an **inquiry model** appeals process, as opposed to allowing an adversarial system to evolve, did make the foregoing recommendation. It also recommended that "employers may not appear at the same time as an injured worker before an appeal panel of the OCAC." and "employers may not appeal a decision of the Board but shall be provided with a vehicle to present evidence to the OCAC when a person in their employ appeals a decision of the Board."

The 1988 report *"A Review of the New Brunswick Workers' Compensation Board"*, Phase II Volume 1, at page 49 had the following recommendation:

> "Section 79 of the Act limits access to information and the Provincial Right to Information Act does not at the present time cover the Workers' Compensation Board, notwithstanding a proposal from the Ombudsman to make this inclusion.
>
> While we do not believe that information at the Board or in the files should be generally available, access should be considered for employers and workers (or their counsel or agents) to that information relevant to an appeal, under certain specified conditions.
>
> *Recommendation*
>
> 98. Employers and/or injured workers, their counsel or agents should be permitted access to their files for information relevant to an appeal provided,
>
>   1. no other use shall be made of that information,
>   2. it cannot become or form part of the personnel file of the workers
>   3. a non-disclosure agreement is entered into prior to access being allowed.
>   4. it is an offence to use the information for other than an appeal."

This Committee is convinced that an orderly process of access to Board files is an important issue to injured workers and a matter that has contributed, we believe, to much misunderstanding, confrontation, confusion and frustration between injured workers and the Board over many years.

RECOMMENDATION L-65

(A) THAT SECTION 71 BE REPEALED.

(B) THAT A NEW SECTION, CAPTIONED "ACCESS TO BOARD FILES ON INJURED WORKERS", BE SUBSTITUTED AND CONTAIN THE FOLLOWING PRINCIPLES:

(i) UPON THE WRITTEN REQUEST OF AN INJURED WORKER OR HIS/HER REPRESENTATIVE, THE BOARD SHALL PROVIDE FULL ACCESS, INCLUDING COPIES, TO HIS/HER BOARD FILE. IN THE CASE OF DECEASED WORKERS, FULL ACCESS TO BOARD FILES SHALL BE GRANTED UPON THE WRITTEN REQUEST OF PERSON(S) WHO MAY BE ENTITLED TO BENEFITS UNDER THE ACT, OR THEIR REPRESENTATIVES.

(ii) ACCESS TO BOARD FILES SHALL BE LIMITED TO OCCASIONS WHERE THERE IS AN ISSUE IN DISPUTE. FISHING EXPEDITIONS SHOULD BE DISALLOWED.

(iii) WHERE, IN THE OPINION OF THE BOARD, THE FILE OF A WORKER CONTAINS MEDICAL OR OTHER INFORMATION, THAT WOULD BE HARMFUL TO THE WORKER, IF PROVIDED TO THE WORKER, THE BOARD SHALL PROVIDE COPIES OF SUCH INFORMATION TO A PHYSICIAN OF THE WORKERS CHOICE, WHO, IN TURN, MAY DISCUSS (AND DISCLOSE) SUCH INFORMATION WITH THE WORKER.

(iv) WHERE THERE IS AN ISSUE IN DISPUTE AND UPON WRITTEN REQUEST, THE BOARD SHALL PROVIDE COPIES OF SUCH MEDICAL INFORMATION TO THE EMPLOYER THAT IS PERTINENT TO THE DISPUTE AT ISSUE, AS THE BOARD MAY CONSIDER TO BE RELEVANT TO THAT ISSUE IN DISPUTE. ONLY THAT INFORMATION THAT IS SPECIFICALLY SET OUT IN THE WRITTEN REQUEST AND WHICH IS RELEVANT TO THE SPECIFIC ISSUE AT DISPUTE SHALL BE DISCLOSED TO THE EMPLOYER OR THE EMPLOYER'S REPRESENTATIVE, AS THE CASE MAY BE.

(v) THE BOARD SHALL PROVIDE FOR A STANDARD FORM THAT MUST BE USED BY EMPLOYERS WHEN THEY ARE SEEKING ACCESS TO INFORMATION IN AN EMPLOYEE'S FILE. THE FORM SHALL CLEARLY ESTABLISH THAT ONLY SUCH INFORMATION THAT IS RELEVANT TO THE MATTER IN DISPUTE MAY BE DISCLOSED AND THE EMPLOYER MUST CLEARLY ESTABLISH, IN THE WRITTEN REQUEST, THE RELEVANCY OF THE INFORMATION SOUGHT TO THE CASE AT DISPUTE.

(vi) UPON RECEIPT OF A WRITTEN REQUEST FOR ACCESS TO A WORKERS FILE, THE BOARD SHALL IMMEDIATELY NOTIFY THE WORKER INVOLVED OR HIS/HER REPRESENTATIVE. SUCH NOTIFICATION SHALL CONTAIN A COPY OF THE EMPLOYER'S WRITTEN REQUEST. THE WORKER, OR HIS/HER REPRESENTATIVE MAY RAISE AN OBJECTION, WITH REASONS, THAT THE INFORMATION BEING SOUGHT SHOULD NOT BE DISCLOSED.

(vii) THE BOARD, WHETHER IT RECEIVES A WORKER'S WRITTEN OBJECTION OR NOT, SHALL INITIALLY ISSUE A "NOTICE OF DECISION" WHICH IS A PRELIMINARY DECISION OF ITS' INTENT, ON THE EMPLOYER'S REQUEST, TO DISCLOSE TO THE EMPLOYER OR NOT TO DISCLOSE TO THE EMPLOYER, THE SPECIFIC INFORMATION REQUESTED. THIS "NOTICE OF DECISION" WILL BE FORWARDED TO THE PARTIES WHO SHALL BE PROVIDED A PRE-DETERMINED TIME FRAME WITHIN WHICH THEY MAY RAISE AN APPEAL TO THAT DECISION OF INTENT AND NO DISCLOSURE OF ANY INFORMATION SHALL BE MADE UNTIL THE EXPIRY OF THE PRE-DETERMINED TIME FRAME OR UNTIL THE APPEALS BOARD GIVES ITS DECISION, WHICHEVER OCCURS LATER.

(viii) ALL DECISIONS OF THE BOARD RELATED TO ACCESSING INFORMATION IS APPEALABLE TO THE APPEALS BOARD UNDER THE ACT. THE DECISION OF THE APPEALS BOARD IS FINAL AND BINDING ON THE PARTIES.

(ix) WORKERS, EMPLOYERS OR THEIR REPRESENTATIVES SHALL BE BOUND BY A "NON-DISCLOSURE AGREEMENT" THAT SHALL FORBID THE USE OF ANY INFORMATION DISCLOSED TO THEM BY THE BOARD, 1) FOR PURPOSES OTHER THAN THE DISPUTE AT HAND; 2) IT CANNOT BECOME PART OF ANY PERSONNEL FILE; 3) IT IS AN OFFENCE UNDER THE ACT (WITH STIFF PENALTIES) TO USE THE INFORMATION FOR ANY OTHER PURPOSE THAN STATED IN THE ORIGINAL REQUEST FOR INFORMATION AND FOR ANY OTHER PURPOSE THAN FOR AN APPEAL UNDER THE ACT.

RECOMMENDATION L-66

SECTION 72 - WHERE ANY WORK WITHIN THE SCOPE OF THIS PART IS PERFORMED UNDER CONTRACT FOR ANY MUNICIPALITY OR PUBLIC SERVICE COMMISSION, ANY ASSESSMENT IN RESPECT OF THE WORK MAY, AT THE DISCRETION OF THE BOARD, BE PAID BY THE CORPORATION OR COMMISSION, AND THE AMOUNT OF THE ASSESSMENT DEDUCTED FROM ANY MONEYS DUE THE CONTRACTOR IN RESPECT OF THE WORK.

RECOMMENDATION L-67

SECTION 75

(A) EVERY EMPLOYER WHO IS ASSESSED ANY ASSESSMENT UNDER THIS ACT IS DEEMED TO HOLD THE SAME IN TRUST FOR THE WORKERS' COMPENSATION BOARD AND FOR THE PAYMENT OVER OF THE SAME IN THE MANNER AND AT THE TIME PROVIDED UNDER THIS ACT, AND THE AMOUNT, UNTIL PAID, FORMS A LIEN AND CHARGE ON HIS ENTIRE ESTATE OR ON THE ENTIRE ASSETS OF HIS ESTATE IN THE HANDS OF ANY TRUSTEE, AND SUCH LIEN OR CHARGE HAS PRIORITY OVER ALL OTHER CLAIMS OF ANY PERSON SUBJECT ONLY TO TAXES.

(B) THE AMOUNT OF THE ASSESSMENT ON AN EMPLOYER SHALL BE DEEMED TO BE HELD SEPARATE FROM AND FORM NO PART OF THE ESTATE OR ASSETS OF THE EMPLOYER, WHETHER OR NOT THE AMOUNT OF ASSESSMENT HAS IN FACT BEEN KEPT SEPARATE AND APART FROM THE ESTATE OR ASSETS OF THE EMPLOYER.

SECTION 79 - ASSOCIATIONS

Section 79 provides for the establishment of employer associations encompassing an industry or industries for the purpose of accident prevention within a particular jurisdiction.

Section 1(c) clearly establishes that such associations are associations or bodies of employers whose constitution has been approved by the Board and therefore employee or worker associations are not contemplated in Section 79.

In establishing such association, the industry must receive the Board's approval of its' rules before it may be recognized for the purposes of financial assistance as set out in Subsections (2) and (3).

During the hearings segment of our review, the Committee received minimal comment and recommendation as regards Section 79. However, the comment was critical in the sense that workers organizations were unable to benefit from the Section and, as well, that workers had no direct involvement in the function of these associations.

Our research does indicate that other jurisdictions do have a similar provision in their legislation and that the purpose of such associations, it does appear, is for the purposes of safety education.

For example Section 123(1) of the Ontario legislation reads:

> "The employers in any of the classes for the time being included in Schedule 1 may, with the approval and under the control of the Board, form themselves into an association for the purpose of education in accident prevention."

The Honourable Mr. Justice Roach, in his 1950 report (Ontario) at Page 88 had the following to say on this subject:

> "The prevention of accidents in industry is a subject of no less importance than is compensation for injuries sustained as a result of such accidents. It is infintely more important that, where possible, an accident should be prevented than that it should be permitted to occur and the victim be compensated. It is therefore appropriate that an Act which provides compensation to the victims of industrial accidents should contain provisions dealing with prevention of such accidents.
>
> Since accident prevention is of common interest to both employers and workmen it would seem logical that they should both actively participate in any organized system the purpose of which is to lessen industrial accidents. As between the two groups, it seems to me that the workmen are much more vitally interested than the employers. If a workman is maimed in an industry, the employer has to pay the compensation but no monetary allowance can ever adequately compensate a workman who has to go through the balance of his life minus an eye, or a hand or some other member.
>
> My first criticism of the present system is that it does not provide any means which will ensure the active participation of labour in the work of accident prevention.
>
> My second criticism is that the relationship between the Board and the associations is much too remote. The Board, it is true, scrutinizes the annual budget of such associations; the managers of the associations, some of them much more frequently than others, confer with the Board verbally, and on occasions in writing complain about what those managers consider are flagrant violations of safety regulations; but there are too few occasions in which the Board gets its hand on the pulse of the associations to determine the extent to which they are carrying out the work of accident prevention. In saying that, I do not mean to criticize the Board, but I do mean to criticize the system. There is no statutory obligation on any of those associations to report to anyone. Each association was brought into existence on the application of a representative group of employers in one or more classes. They owe no duty to anyone. There is no statutory obligation on them to continue to function and the extent to which they function is their own business. Although it is not likely to happen it is pertinent to observe that if any one of them ceased to function tomorrow there are no provisions in the Act for the carrying on of the important work of accident prevention.
>
> Even if those associations should be functioning at the highest degree of efficiency and under direct supervision of the Board there would still be something lacking in the system. In my respectful opinion any completely organized system of accident prevention requires as part thereof committees of employers and workmen at plant level. Specific duties should be laid down for those committees and they should be required to report periodically to the Board. If the Board is in receipt of such reports, it will be in a position to gauge the effectiveness of the work of the associations. The Board under the British Columbia Act has passed a regulation requiring the setting up of such committees and informed me that it has found them very effective in the work of accident prevention.

In my opinion also any completely organized system for accident prevention requires a code of accident prevention regulations which shall constitute the minimum and for the breach of which adequate penalties may be imposed. I am in grave doubt as to the meaning of section 116(2) of the Act, that is to say, whether the "rules" there referred to include accident prevention regulations or whether they are limited to "rules" for the internal management of the association."

The Committee has a particular concern as it relates to subsection (3) in that there is no requirement for the reimbursment to the accident fund as is provided for in subsection (2).

RECOMMENDATION L-68

(A) SECTION 79(3) - THE BOARD MAY MAKE AN ALLOWANCE TO ANY ASSOCIATION TO MEET ANY EXPENSES OF THE ASSOCIATION AND PAY THE ALLOWANCE OUT OF THE ACCIDENT FUND AND THE BOARD MAY RECOVER SUCH COSTS BY LEVYING A SPECIAL ASSESSMENT AGAINST THE CLASS, SUBSECTION OR GROUP FOR WHOSE BENEFIT THE ALLOWANCE IS PAID.

(B) SO AS TO OFFSET THOSE MAJOR CONCERNS AS RAISED BY THE HONOURABLE MISTER JUSTICE ROACH IN HIS REPORT AND OF WHICH THIS COMMITTEE HOLDS SOME CONCERN, WE STRONGLY SUGGEST THAT THE WORKERS' COMPENSATION BOARD WHEN IT IS REQUESTED TO APPROVE THE CONSTITUTION OF ANY ASSOCIATION, AS REQUIRED BY SECTION 1(C) OF THE ACT, AND APPROVES THE ASSOCIATION'S RULES, AS REQUIRED BY SECTION 79(1) OF THE ACT, REQUIRES THAT THE CONSTITUTION AND RULES CONTAIN THE FOLLOWING PROVISIONS:

1) PROVIDE FOR THE ACTIVE PARTICIPATION IN ACCIDENT PREVENTION PROGRAMS BY WORKERS;

2) PROVIDE FOR THE NEED TO HAVE THE WORKERS' COMPENSATION BOARD APPROVE ALL BUDGETS OF THE ASSOCIATION;

3) PROVIDE FOR THE NEED TO HAVE THE WORKERS' COMPENSATION BOARD APPROVE ALL PROGRAMS RELATED TO ACCIDENT PREVENTION AS PROPOSED BY THE ASSOCIATION;

4) PROVIDE FOR THE NEED TO FORMALIZE A CODE OF ACCIDENT PREVENTION REGULATIONS WHICH SHALL MEET THE APPROVAL OF THE WORKERS' COMPENSATION BOARD; AND

5) PROVIDE FOR THE NEED TO MAKE REGULAR REPORTS TO THE WORKERS' COMPENSATION BOARD IN ALL ASSOCIATION ACTIVITIES.

INDUSTRIAL DISEASES

The Honorable Sir William Ralph Meredith, C.J.O., in his final report on Laws Relating to the Liability of Employers, to His Honor Sir John Morison Gibson, K.C.M.G., K.C., L.L.D., Lieutenant Governor of the Province of Ontario, 1913 (Appendix "F") at Page 13 had the following to say on the subject of industrial diseases:

> "By my draft bill, following in this respect the British act. industrial diseases are put on the same footing as to the right of compensation as accidents. The diseases to which the act is to be made applicable are six in number and are enumerated in schedule 3 to my draft bill, but power is given to the Board by its regulations to add to the schedule. It would, in my opinion, be a blot on the act if a workman who suffers from an industrial disease contracted in the course of his employment is not to be entitled to compensation. The risk of contracting disease is inherent in the occupation he follows and he is practically powerless to guard against it. A workman may to some extent guard against accidents, and it would seem not only illogical but unreasonable to compensate him in the one case and to deny him the right to compensation in the other."

During the public hearing part of our review, the Committee heard the concerns of individuals and organizations as they relate to this whole area of industrial diseases and Workers' Compensation.

The following is excerpted from the presentation of a workers organization:

> "The disparity between disease and accident claims is especially startling given the general backdrop of disease/accident statistics in our society. The fact that 80 percent of the premature deaths among Canadians result from disease and not accidents and that 95 percent of the recipients of total disability benefits from the Canada Pension Plan are disabled as a result of disease and not accidents, certainly suggests that there is a gross under reporting and misrepresentation of the true toll of workplace disease in any compensation figures.
>
> The gross under reporting of occupational disease in Worker's Compensation statistics is a fact - because disease claims were rejected or not filed at all. Unless Boards are willing to change their entire approach to compensating occupational disease, there is no reason to think the situation will improve. The fact that most of the 300-600 chemicals that are introduced into our workplaces each year are inadequately tested, means that future victims will also be denied compensation because of a lack of evidence connecting disease to exposure. The same reasoning applies to chemicals already in existence: about 80% of chemicals in industrial use have no toxicological data and the data are inadequate for most of the rest. When an exposure limit is based on substantial data, this is still not a guarantee of good health. The same applies to other health hazards at work, such as noise, vibration and electromagnetic radiations.
>
> The introduction of WHMIS has lead to a heightened awareness to hazardous materials exposure in the workplace. The possible health effects from that exposure are now recognized increasingly by workers in Canada. Where there are workplace exposure incidents, these incidents should be documented through an incident exposure record. These exposure records should be filed with the WCB under whose jurisdiction the workplace in question falls."

"...there are pressures to accept only those diseases for which there is epidemiological evidence of a cause and effect relationship. But epidemiology is a very crude tool that can indicate a problem only when many workers are affected (or a few are affected at high levels of exposure); we can rarely provide the human evidence for the causes of many occupational diseases."

"It is simply not fair that for most health hazards, there is no requirement to test for degree and type of hazard, yet workers suffering from disease are expected to provide just such evidence in order to validate their case. It is simply not fair that workers suffering from disease should be expected to provide the requisite medical expertise when society itself fails to provide the training for the medical profession itself. Nor is it fair that we as taxpayers and the society as a whole, bear the costs of failing to compensate occupational disease victims due to these complexities.

The presumption should be that the disease arose out of or in the course of employment, unless the opposite can be proved, and legislation should include a "benefit of the doubt" provision in favour of compensation for the disease."

An employer organization had the following to say on this topic:

"It is with interest that we have examined PEI's schedule of industrial diseases, which appears quite extensive. It should be noted that the matter of establishing the linkage between the workplace and the particular disease suffered by the individual has been contentious in some jurisdictions. Our suspicion is that this will eventually arise as a problem for PEI, and therefore we suggest a more formal mechanism for bringing scientific evidence to bear on the question of work-relatedness in disease cases. We expect that the Board's Medical Officer does employ scientific evidence, in first designating a disease as compensable, and in subsequently fleshing out the exposure criteria in policy. Nevertheless, a legislated requirement that this be done would add confidence to the process."

Our research would indicate that P.E.I. legislation is among the most restrictive in the country with regard to industrial diseases being recognized and compensated.

Ison concludes that the provisions of the P.E.I. legislation seem to exclude compensation for any occupational disease of any gravity. (Workers' Compensation in Canada, 2nd edition, page 39.)

As was referenced earlier in this report (Recommendation L-4), the Committee is recommending an improved definition, a revised schedule of recognized industrial diseases and an Industrial Disease Panel which should be recognized as the consultant-advisor to the Board in this critical area of concern.

RECOMMENDATION L-69

SECTION 80 - INDUSTRIAL DISEASES

(A) SECTION 80(1) - (i) DELETE THE WORDS "CONTRACTED AFTER THE DISEASE WAS DECLARED TO BE AN INDUSTRIAL DISEASE" IN LINES ONE AND TWO.

(ii) DELETE THE WORDS "WITHIN TWELVE MONTHS" IN LINE FOUR.

(B) SECTION 80(2) - WHERE THE BOARD IS SATISFIED THAT THE INDUSTRIAL DISEASE IS DUE TO EMPLOYMENT OUTSIDE OF THE PROVINCE OF PRINCE EDWARD ISLAND THE BOARD MAY DENY THE CLAIM AND NO COMPENSATION WOULD BE PAYABLE UNDER THIS SECTION.

(C) SECTION 80(5) - REPEAL

(D) SECTION 80(6) - REPEAL

(E) THAT THE SCHEDULE OF INDUSTRIAL DISEASES BE UPGRADED AND REVISED AT REGULAR INTERVALS SO AS TO REFLECT MEDICAL FINDINGS, FROM TIME TO TIME, THAT CONCLUDE PROBABLE CONNECTION EXISTS *BETWEEN* A DISEASE AND AN EMPLOYMENT.

(F) (i) THAT AN "INDUSTRIAL DISEASE PANEL" BE ESTABLISHED WITHIN THE OCCUPATIONAL HEALTH AND SAFETY DIVISION OF THE DEPARTMENT OF LABOUR.

(ii) THAT THE PANEL SHALL BE COMPOSED OF NOT MORE THAN SEVEN MEMBERS REPRESENTATIVE OF THE PUBLIC, SCIENTIFIC, TECHNICAL, AND PROFESSIONAL COMMUNITIES.

(iii) THE MEMBERS OF THE PANEL SHALL INCLUDE A REPRESENTATIVE OF THE OCCUPATIONAL HEALTH AND SAFETY DIVISION, DEPARTMENT OF LABOUR; THE BOARD MEDICAL CONSULTANT, WORKERS' COMPENSATION BOARD; AND FIVE OTHER PERSONS APPOINTED BY THE LIEUTENANT GOVERNOR IN COUNCIL, ONE OF WHOM SHALL BE REPRESENTATIVE OF WORKERS AND ONE OF WHOM SHALL BE REPRESENTATIVE OF EMPLOYERS.

(iv) THE LIEUTENANT GOVERNOR IN COUNCIL SHALL DESIGNATE ONE OF THE MEMBERS AS CHAIRPERSON AND ANOTHER MEMBER AS VICE-CHAIRPERSON.

(v) THE REMUNERATION, BENEFITS AND ALLOWANCES OF THE MEMBERS OF THE PANEL SHALL BE AS DETERMINED BY THE LIEUTENANT GOVERNOR IN COUNCIL.

(vi) IT SHOULD BE THE FUNCTION OF THE PANEL TO:

a) INVESTIGATE POSSIBLE INDUSTRIAL DISEASES,

b) TO MAKE FINDINGS AS TO WHETHER A PROBABLE CONNECTION EXISTS BETWEEN A DISEASE AND AN INDUSTRIAL PROCESS, TRADE OR OCCUPATION,

c) TO CREATE, DEVELOP AND REVISE CRITERIA FOR THE EVALUATION OF CLAIMS RESPECTING INDUSTRIAL DISEASES,

d) TO ADVISE ON ELIGIBILITY RULES REGARDING COMPENSATION FOR CLAIMS RESPECTING INDUSTRIAL DISEASES.

e) THE PANEL SHALL MEET IN RESPONSE TO A SPECIFIC REQUEST FROM THE BOARD WITH REGARD TO (vi) a), b), c), AND d) ABOVE; NEVERTHELESS, THE PANEL SHOULD MEET AT LEAST ONCE A YEAR TO DISCUSS DEVELOPING TRENDS AND TO ADVISE THE BOARD WHERE THE PANEL MAY FEEL IT IS APPROPRIATE.

WORKERS' ADVOCATE

During the process of public hearings, the Committee received considerable comment and recommendation with regard to creating the position of Workers' Advocate.

Some selected comments from presenters is as follows:

"The system of Workers' advisers should become a major, universal component of the compensation system, aimed primarily at helping unorganized workers."

"Seven Canadian Provinces have at least some form of Workers' Advocates system. It is time that P.E.I. recognized the need for this procedure and established such an office."

"To assist workers who are often intimidated and frustrated by a complicated and bureaucratic system, it is important that they have free access to a Workers' Advocate."

"These worker advisers must be completely independent of the WCB and safe from political interference to allow them to carry out the role of providing fair and impartial advice to injured workers."

Throughout the public hearings segment of our review, the Committee heard comment from presenters which could only be interpreted as being of a complaint nature, critical and contemptuous of Board operations and process.

This criticism ranged the gamut of poor attitudes to intimidation. Such feelings can only culminate in frustration and exasperation on the part of clients and subsequently exhibit itself outwardly in displays of criticism, as we have witnessed in these proceedings; and, whether real or imagined have to be dealt with.

We feel it is this feeling of frustration and exasperation with the system which brings forth recommendations such as this one for Workers Advocates.

The Committee is confident that if our recommendations made in this report, as they relate to re-organization and structure, staff training, appeal procedure, published policy and practice and accessibility to information are carried out, it will lead to reduced tension, suspicion and frustration, all of which are root cause, we believe, for such a request as this one.

In anticipation of such being the case, the Committee is not prepared to recommend the creation of the office of Workers' Advocate, at least not in the immediate future.

RECOMMENDATION L-70

WORKERS' ADVOCATE

A) FOLLOWING IMPLEMENTATION OF THE COMMITTEE'S RECOMMENDATIONS AS RELATED TO RE-ORGANIZATION, STAFF TRAINING, APPEAL PROCEDURE, PUBLISHING POLICY AND PRACTICES, AND ACCESSIBILITY TO INFORMATION, WE ARE RECOMMENDING A REVIEW TO DETERMINE THE AFFECT AND ANY LINGERING NECESSITY FOR CREATING THE OFFICE OF WORKERS' ADVOCATE.

B) WE RECOMMEND THAT SUCH REVIEW SHOULD BE CARRIED OUT NO LATER THAN THREE (3) YEARS HENCE, i.e. THE FALL OF 1993.

C) THE REVIEW COMMITTEE SHOULD BE COMPRISED OF EQUAL NUMBERS OF WORKER AND EMPLOYER REPRESENTATIVES WITH A NEUTRAL CHAIRPERSON.

D) SHOULD THIS REVIEW COMMITTEE DETERMINE THAT THE OFFICE OF WORKERS' ADVOCATE IS APPROPRIATE, THEN WE WOULD RECOMMEND THE FOLLOWING BE WRITTEN INTO THE LEGISLATION:

E) *WORKERS' ADVOCATES*

(i) THE LIEUTENANT GOVERNOR IN COUNCIL MAY APPOINT WORKERS' ADVOCATES.

(ii) THE WORKERS' ADVOCATES SHALL BE PAID REMUNERATION FIXED BY THE LIEUTENANT GOVERNOR IN COUNCIL, AND ACTUAL AND REASONABLE EXPENSES INCURRED BY THEM IN THE DISCHARGE OF THEIR DUTIES.

(iii) ALL MONEY REQUIRED TO BE PAID UNDER SUBSECTION (ii) SHALL BE PAID BY THE GOVERNMENT, BUT THE WORKERS' COMPENSATION BOARD SHALL REIMBURSE THE GOVERNMENT FOR ALL AMOUNTS SO PAID WHEN REQUESTED BY THE MINISTER.

(iv) ON RECEIVING A REQUEST UNDER SUBSECTION (iii), THE WORKERS' COMPENSATION BOARD SHALL, OUT OF THE ACCIDENT FUND, PAY THE AMOUNT REQUESTED TO THE MINISTER OF FINANCE.

(v) NOTWITHSTANDING THE CIVIL SERVICE ACT, THE MINISTER MAY ENTER INTO CONTRACTS AND AGREEMENTS TO PROVIDE FOR THE FACILITIES, EQUIPMENT AND STAFF NECESSARY FOR THE EFFICIENT PERFORMANCE OF THE DUTIES OF THE WORKERS' ADVOCATES.

(vi) THE WORKERS' ADVOCATE NEED NOT BE MEMBERS OF THE LAW SOCIETY OF PRINCE EDWARD ISLAND, AND IF ONE OF THEM IS NOT, HE SHALL NOT BE BARRED FROM REPRESENTING ANY WORKER IN HIS ROLE OF WORKERS' ADVOCATE.

(F) A WORKERS' ADVOCATE SHALL

(i) GIVE ASSISTANCE TO A WORKER OR TO A DEPENDANT HAVING A CLAIM UNDER THIS ACT, EXCEPT WHERE THE WORKERS' ADVOCATE THINKS THE CLAIM HAS NO MERIT,

(ii) ON CLAIMS MATTERS, COMMUNICATE WITH OR APPEAR BEFORE THE BOARD, REVIEW BOARD OR ANY OTHER TRIBUNAL ESTABLISHED BY OR UNDER THIS ACT ON BEHALF OF A WORKER OR DEPENDANT WHERE THE ADVISER CONSIDERS ASSISTANCE IS REQUIRED, AND

(iii) ADVISE WORKERS AND DEPENDANTS WITH REGARD TO THE INTERPRETATION AND ADMINISTRATION OF THIS ACT OR ANY REGULATIONS OR DECISIONS MADE UNDER IT.

(G) *CONFIDENTIALITY*

(i) WORKERS' ADVOCATES AUTHORIZED TO MAKE EXAMINATIONS OR INQUIRIES UNDER THIS PART SHALL NOT DIVULGE OR ALLOW TO BE DIVULGED, EXCEPT IN THE PERFORMANCE OF THEIR DUTIES OR UNDER THE AUTHORITY OF THE BOARD, INFORMATION OBTAINED BY THEM OR WHICH HAS COME TO THEIR KNOWLEDGE IN MAKING OR IN CONNECTION WITH AN EXAMINATION OR INQUIRY UNDER THIS PART.

(ii) EVERY PERSON WHO VIOLATES SUBSECTION (i) COMMITS AN OFFENCE AGAINST THIS PART.

(iii) THE WORKERS' ADVOCATE, AND THEIR STAFF SHALL HAVE ACCESS AT ANY REASONABLE TIME TO THE COMPLETE CLAIMS FILES OF THE BOARD AND ANY OTHER MATERIAL PERTAINING TO THE CLAIM OF AN INJURED OR DISABLED WORKER; BUT THE INFORMATION CONTAINED IN THOSE FILES SHALL BE TREATED AS CONFIDENTIAL TO THE SAME EXTENT AS IT IS SO TREATED BY THE BOARD.

INTERJURISDICTIONAL AGREEMENT

Nine of the eleven jurisdictions have provisions in their respective Acts which enable those Boards to enter into interjurisdictional agreements to avoid the duplication of assessments and to enter agreements related to such other matters as providing services to an injured worker who has moved his residence, including the payment of benefits, subject to reimbursment; assisting another jurisdiction in receiving assistance in auditing employers records; adjudicating and cost sharing in disease cases, etc.

Only Prince Edward Island and Nova Scotia are not parties to such agreements. Prince Edward Island's legislation does not provide the necessary power to the Board to enter into such agreements.

The Committee is persuaded that such agreements are beneficial to the Boards, employers and workers alike and therefore are prepared to recommend as follows:

RECOMMENDATION L-71

THAT THE FOLLOWING CLAUSE BE INCORPORATED INTO THE ACT:

(A) WITH A VIEW TO AVOIDING DUPLICATION OF ASSESSMENTS TO WHICH AN EMPLOYER MAY BE LIABLE ON THE EARNINGS OF WORKERS WHO ARE EMPLOYED PART OF THE TIME IN PRINCE EDWARD ISLAND AND PART OF THE TIME IN ANOTHER PROVINCE OR TERRITORY OF CANADA, THE BOARD MAY MAKE AN AGREEMENT WITH THE WORKERS' COMPENSATION AUTHORITY OF THAT PROVINCE OR TERRITORY FOR SUCH ADJUSTMENT OF ASSESSMENTS AS IS EQUITABLE AND MAY REIMBURSE SUCH OTHER AUTHORITY FOR ANY PAYMENT OF COMPENSATION, REHABILITATION OR HEALTH CARE MADE BY IT UNDER SUCH AGREEMENT, AND MAY, IN ORDER TO GIVE EFFECT TO ANY SUCH AGREEMENT, RELIEVE ANY SUCH EMPLOYER FROM ASSESSMENT OR REDUCE THE AMOUNT THEREOF.

(B) WHERE BY THE LAW OF THE COUNTRY OR PLACE IN WHICH THE ACCIDENT HAPPENS THE WORKER IS OR HIS DEPENDANTS ARE ENTITLED TO COMPENSATION IN RESPECT OF IT, THEY SHALL BE BOUND TO ELECT WHETHER THEY WILL CLAIM COMPENSATION UNDER THE LAW OF SUCH COUNTRY OR PLACE OR UNDER THIS PART AND TO GIVE NOTICE OF SUCH ELECTION, AND, IF SUCH ELECTION IS NOT MADE AND NOTICE GIVEN, IT SHALL BE PRESUMED THAT THEY HAVE ELECTED NOT TO CLAIM COMPENSATION UNDER THIS PART.

(C) NOTICE OF THE ELECTION, WHERE THE COMPENSATION UNDER THIS PART IS PAYABLE BY THE EMPLOYER INDIVIDUALLY, SHALL BE GIVEN TO THE EMPLOYER AND, WHERE THE COMPENSATION IS PAYABLE OUT OF THE ACCIDENT FUND, TO THE BOARD, AND SHALL BE GIVEN IN BOTH CASES WITHIN THREE MONTHS AFTER THE HAPPENING OF THE ACCIDENT OR, IN CASE IT RESULTS IN DEATH, WITHIN THREE MONTHS AFTER THE DEATH OR WITHIN SUCH LONGER PERIOD AS EITHER BEFORE OR AFTER THE EXPIRATION OF SUCH THREE MONTHS THE BOARD MAY ALLOW

SHCEDULE OF DISEASES

As we have set out earlier in this report, we are recommending that a revised schedule of diseases be placed in the Act and that the existing schedule be repealed.

The Committee has received the very able and capable assistance of Dr. John DeMarsh, Medical Officer, Workers' Compensation Board and Mr. Paul Deveau, Director, Occupational Health and Safety Division, Department of Labour, in compiling the proposed schedule of diseases.

We wish to publicly recognize their valued assistance in this matter and to thank them for their co-operation.

The following is excerpted from Terence G. Ison, Workers' Compensation in Canada (Toronto: Butterworth's 1983):

> **Presumptive schedules.** In most jurisdictions, a schedule of industrial diseases is included in the Act, or in regulations. The schedule is in two columns. The first is a list of diseases. Opposite each disease there appears in the second column the type of industry or process that has been known to cause that type of disease. The schedule serves two purposes. First, the mention of a disease in the schedule establishes that it has been recognized as an industrial disease. Secondly, if a worker who has a disease in the first column was engaged in an industry shown opposite that disease in the second column, it is presumed that the disease resulted from industrial exposure unless the contrary is proved. It is unlawful for a board to impose any additional requirement before applying the presumption.
>
> Where a disease is not listed in the schedule, or where column two of the schedule does not apply, the Board must enquire and determine from the evidence, including the circumstantial evidence, whether the employment exposure was likely to have contributed to the disease, or whether it was more likely to have resulted entirely from other causes.

RECOMMENDATION L-72

SCHEDULE OF DISEASES

ALLERGIC ALVEOLITIS (HYPERSENSITIVITY PNEUMONITIS)
ASBESTOSIS
OCCUPATIONAL ASTHMA
BYSSINOSIS
COMPRESSION/DECOMPRESSION SICKNESS (CAISSON DISEASE)
OCCUPATIONAL CANCER
ALLERGIC CONTACT DERMATITIS
DERMATOSES
FROSTBITE - HYPOTHERMIA
HEAT STROKE - HYPERTHERMIA
HEARING LOSS- NOISE INDUCED
HEART ATTACK

OCCUPATIONAL INFECTIOUS DISEASES
OCCUPATIONAL PARASITIC DISEASES
METAL FUME FEVER
PNEUMOCONIOSIS
POISONINGS CAUSED BY - AROMATIC HYDROCARBONS
- ARSENIC
- BERYLLIUM
- NICKEL- CADMIUM
- CARBON MONOXIDE
- CHLORINATED HYDROCARBONS
- CHLORINE
- CHROMIUM
- CYANIDE
- FLUORINE
- LEAD
- MERCURY
- NITROGEN OXIDE
- ORGANIC SOLVENTS
- PHOSPHOROUS
- ORGANIC PHOSPHOROUS COMPOUNDS
- PESTICIDES

RADIATION CAUSED ILLNESSES - IONIZING AND NON-IONIZING
SILICOSIS
SIDEROSIS
STRESS RELATED TO PSYCHOLOGICALLY TRAUMATIC INCIDENT
TENCOSYNOVITIS, TENDONITIS
VIBRATION DISABLEMENT (VWF, REYNAUD'S SYNDROME)
REPETITIVE STRESS INJURY

NOTE:

THE SCHEDULE OF DISEASES AS PROVIDED HEREIN PROVIDES FOR A MEANS OF RECOGNITION ALBEIT WITH NO PRESUMPTION THAT CONTRACTING ANY DISEASE AS LISTED IS AN AUTOMATIC CLAIM TO COMPENSATION.

THE DIAGNOSIS OF OCCUPATIONAL DISEASES SHOULD BE PERFORMED BY PHYSICIANS WITH RECOGNIZED EXPERTISE IN THE AREA.

WE ARE RECOMMENDING AS WELL THAT THE BOARD ENSURE THE ESTABLISHMENT OF DISTINCT CRITERIA FOR EACH OF THE DISEASES IN THE SCHEDULE.

IN SUCH CRITERIA, THERE WOULD NORMALLY BE A CAUSE AND EFFECT RELATIONSHIP ESTABLISHED SO THAT PROBABLE CAUSE IS CONSISTENTLY APPLIED IN ADMINISTERING ANY CLAIMS RELATED TO OCCUPATIONAL DISEASE.

OFFENCES, FINES AND PENALTIES

As we have indicated earlier in this report, the Committee is prepared to recommend that all fines and penalties resulting from violations to the provisions of the Act be established and set out in regulation.

RECOMMENDATION L-73

FOR VIOLATIONS TO THE PROVISIONS OF THE FOLLOWING SECTIONS OF THE ACT WE ARE RECOMMENDING THE FOLLOWING FINES AND PENALTIES:

"(A) SECTION 18(6) - A FINE TO A MAXIMUM OF $500.00 FOR EACH OCCASION;

"(B) SECTION 47(9) - A MINIMUM FINE OF $50.00 PER DAY FOR EACH DAY THE FAILURE CONTINUES UP TO A MAXIMUM OF $500.00 FOR EACH DAY;

"(C) SECTION 66(2) - A FINE OF $100.00 FOR EACH WEEK THAT THE RETURN PAYMENT OR REPORT IS NOT MADE;

"(D) SECTION 70(2) - A MINIMUM FINE OF $500.00 TO A MAXIMUM OF $5,000.00.

CHAPTER TWO

RECOMMENDATIONS

WORKERS' COMPENSATION BOARD

POLICIES AND PRACTICES

CHAPTER TWO

POLICY AND PRACTICE RECOMMENDATIONS

As per its' mandate, the Committee undertook a comprehensive study and analysis of the existing policies and practices, as established by the Workers' Compensation Board; and, reviewed the manner in which such policy and practice is formulated and approved.

During the public hearings segment of our review, the Committee received considerable comment and criticism regarding Board policy and practice. The following is an overview of some of the comment which we received:

> "Ensure that there is opportunity for employers to participate in broad discussions on, and be informed of, board policy matters."
>
> "Consultation and participation with the Board in: (1) Policy and financial matters; (2) Establishment of accident prevention measures; (3) Rehab of injured workers and (4) Proper claims management."
>
> "(The Board should) improve on its communication with the employers."
>
> "A legislative provision should guarantee that the Board would meet at least 40 times each year."
>
> "Board should be subject to bi-partite review every four years on all aspects of their operation."
>
> "An applicant is entitled to the benefit of the doubt, which means that it is not necessary for the applicant to adduce (explain) conclusive proof of his right to the compensation."
>
> "An effective solid set of admissability criteria to deal with claims on a daily basis. This criteria should be communicated to all parties concerned and applied in a consistent manner."
>
> "Claims should be decided fairly and speedily by trained, knowledgeable people."
>
> "Smaller employers deserve accountability from the Board officials for proper administration of the accident fund."
>
> "Adoption of a business plan to address the issue of unfunded liability through tighter controls and not simply rely on increased assessments."
>
> "Sufficient funding for fair and adequate compensation must be a basic commitment of Workers' Compensation Boards. Boards must set assessment rates to fully pre-fund all of the costs of compensation. Failure to do so undermines the integrity of the Historic Compromise on which the compensation system is based. Under-funding, experience rating and other gimmicks used to undermine fair compensation must end if the system is to remain viable."

"A review of workplace practices should be performed by a medical officer of the board and the person should be relied upon to communicate and educate physicians of the nature and scope of the business."

"I have not had a medical check-up by a specialist in connection with my injuries (there being no specialist of this type on P.E.I.) for at least ten years."

"Communication and information flow between the WCB and hospitals must be improved."

"The WCB should communicate its purpose, goals and costs to employees and employers so that all parties to compensation have a better understanding of the purpose of WCB."

"A record of all board policies and procedures should be published on an annual basis, as should an outline of decisions reached during the past year."

"Employer reporting forms should be re-drafted. The new form should require a preliminary investigation and explanation of findings. It should also request the employer to outline what measures, if any, have been taken in the area of corrective actions."

"Meat chart method of determining compensation must be eliminated and each claim must be dealt with and considered on its own merit for wage loss replacement."

"Development of some system which would recognize those employers who conscientiously enforce safety regulations; provide adequate and appropriate safety training for employees and whose safety record reflects the efforts."

"A toll free (telephone) number be established."

"I am not well informed of the policies and practices of the WCB."

"Workers are complaining that pre-existing conditions are being used as a way of reducing compensation or limiting the period of compensation."

"The wording (of the Act) seems to ensure that a pre-existing physical condition will not interfere with the right of a worker to receive compensation for an injury. Yet, we are led to believe that this is not always the case."

"Maintain the accident fund by bringing in a realistic vocational rehabilitation program and educating the employer on ergonomically improving working conditions, eliminating work place hazards, providing safe working conditions."

"That 'light duty' programs be clarified and that assignments be developed in cooperation with the injured employees' supervisor."

"Claim duration data needs to be presented in the annual report in a more understandable form to assess the effectiveness of rehabilitation efforts."

"Staff members who relate directly to workers (or survivors) seeking compensation be provided with the opportunity to acquire such skills as are necessary in effective interviewing and career counselling (education)."

"(The) lack of accountability in supervisors, improper work assignments and delegation is not in concert with accepted management practices."

"W.C. Boards must adopt and make known their policies regarding all aspects of their jurisdiction: admissability criteria, rehabilitation programs, appeals procedure, etc. All have to be clearly understood and applied in a consistent manner."

"The competence of Personnel is a key factor, especially regarding adjudicators and rehabilitation officers. Training is essential, along with increased knowledge of workplaces and coordination with other agencies."

"Finally, work related accident files must not become a field for medical expertise battles or legal conflicts. The primary objectives are to give appropriate care to the injured worker, to correctly assess his condition, and to set up a rehabilitation program geared to a speedy return to work."

As can be readily seen from this randomly selected overview of commentary received by the committee, there exists a common concern as it relates to a lack of openness on the part of the board in its relationship with its' partners, i.e. workers and employers; a failure to clearly enunciate established policy and practice; and, a need for the publishing of policy and practice.

The Committee is convinced that the majority of such critical comment, which it received, regarding the administration of the Workers' Compensation Board stems from an appearance, real or imagined, of secretiveness on the part of the Board. At the very least there has been a failure in communications.

We are therefore convinced that every effort must be made by the Board to open up its operations to the purview of its' partners and the public.

RECOMMENDATION P-74

THE BOARD SHOULD DO A MUCH BETTER JOB IN COMMUNICATING TO ITS' PARTNERS, i.e. WORKERS AND EMPLOYERS ALIKE AND TO THE PUBLIC, THE NATURE OF THE WORKERS' COMPENSATION BOARD'S ORGANIZATION PROCESSES AND PROBLEMS. THROUGH GREATER UNDERSTANDING IT IS HOPED TO GENERATE MORE ACCEPTANCE OF THE BOARD'S ROLE AND ITS EFFORTS IN SOLVING THE DIFFICULT PROBLEMS FACED BY INJURED WORKERS, THEIR DEPENDENTS AND EMPLOYERS.

RECOMMENDATION P-75

THE BOARD SHOULD, AS A FIRST STEP, BE PREPARED TO ADDRESS ITSELF TO THE FUTURE AGENDA OF RE-ORGANIZATION AND NEW OPERATING PRINCIPLES, WHICH MUST BE MARKED BY A NEW OPENNESS.

IN PLANNING FOR THE NEW AGENDA, THE INITIAL STEP WOULD BE TO PROMULGATE A *MISSION STATEMENT* FOR THE BOARD WITH ITS' FOCUS BEING ON SERVICE DELIVERY, FINANCIAL SOUNDNESS, PUBLIC UNDERSTANDING AND RESPONSIBLE ADMINISTRATION.

RECOMMENDATION P-76

OVER A REASONABLE TIME FRAME, THE BOARD SHOULD FORMULATE A COMPREHENSIVE STRATEGIC PLAN FOR MEETING THE OBJECTIVES WHICH IT HAS LAID OUT IN ITS *MISSION STATEMENT* IN AN OPERATIONAL MANNER. THEREAFTER, ONGOING EVALUATIONS, WITH INPUT FROM PARTNERS, SHOULD BE CONDUCTED AND WILL, HOPEFULLY, DEMONSTRATE THE EFFECTIVENESS OF THE RE-ORGANIZATION STRUCTURES AND APPROACHES TO MEET THE NEEDS INTO THE FUTURE.

RECOMMENDATION P-77

THE FOLLOWING RECOMMENDATIONS ARE SPECIFIC WITH REGARD TO THE DEVELOPMENT OF POLICY AND PRACTICE AND ITS' PROMULGATION:

A) A FORM DOCUMENT SHOULD BE DEVELOPED AND USED IN PRESENTING ALL PROPOSED POLICY AND PRACTICE TO THE BOARD OF GOVERNORS FOR ITS' APPROVAL.

SUCH DOCUMENT SHOULD CONTAIN, IN ITS HEADING, SUFFICIENT SPACE TO ILLUSTRATE THE FOLLOWING INFORMATION: SUBJECT, SOURCE DIVISION, CERTIFICATION OF DIRECTOR OF SOURCE DIVISION, CERTIFICATION OF CHIEF EXECUTIVE OFFICER OR CHIEF APPEAL COMMISSIONER, BOARD MINUTE DATE, POLICY NO., EFFECTIVE DATE, CERTIFICATION OF CHAIRMAN, DISTRIBUTION.

FOR EXAMPLE:

THE WORKERS' COMPENSATION BOARD

PRINCE EDWARD ISLAND

POLICY AND PRACTICE

SUBJECT:	SOURCE DIVISION:
DIRECTOR'S CERTIFICATION:	C.E.O./ C.A.C. CERTIFICATION:

BOARD MINUTE DATE: POLICY NO.

CHAIRMAN'S CERTIFICATION: EFFECTIVE DATE:

DISTRIBUTION:

PROPOSED POLICY/PRACTICE:

RATIONALE:

B) THE PROPOSED POLICY/PRACTICE SHOULD BE WRITTEN IN VERY CLEAR AND UNDERSTANDABLE LANGUAGE. SPECIAL CARE MUST BE GIVEN TO ENSURING THAT WORKERS AND EMPLOYERS SHALL HAVE LITTLE TROUBLE IN INTERPRETING THE POLICY STATEMENT.

C) THE PROPOSED POLICY/PRACTICE MUST BE ACCOMPANIED WITH A CLEAR STATEMENT WITH REGARD TO WHY THE POLICY/PRACTICE IS DEEMED NECESSARY AND AN EXPLANATION OF ITS BENEFITS, AS WELL AS ANY NEGATIVE POTENTIALS WHICH MAY ARISE OR RESULT FROM THE IMPOSITION OF THE POLICY.

D) UPON RECEIVING BOARD APPROVAL TO IMPLEMENT SUCH POLICY/ PRACTICE, THE WRITTEN POLICY SHALL BE MAINTAINED IN A CENTRAL FILE WHERE IT MAY BE RETRIEVED WHENEVER NECESSARY. SUCH FILE SHALL BE MAINTAINED AND UP-DATED FROM TIME-TO-TIME AS POLICY IS DEVELOPED, AMENDED OR RESCINDED.

E) WRITTEN POLICY/PRACTICE SHALL ALSO BE PUBLISHED AND MADE AVAILABLE UPON REQUEST OR OTHERWISE CIRCULATED AS DEEMED NECESSARY AND APPROPRIATE UNDER THE CIRCUMSTANCES AND NATURE OF THE POLICY.

F) ALL POLICY AND PRACTICE SHALL BE ACCESSABLE BY THE PARTNERS.

G) ALL EXISTING POLICY AND PRACTICE SHOULD BE UPDATED AND RE-APPROVED BY THE BOARD, AS A LOT OF NECESSARY INFORMATION, e.g. DATE OF APPROVAL AND RATIONALE, IS MISSING OR LOST OVER THE YEARS.

EXISTING WRITTEN POLICY AND PRACTICE

Our review of the existing written policy and practice, which was provided to us by the Board Administration, has revealed: that out-dated policy exists; that there is a critical need to write the policy and practice in clear and understandable language; far too much of the existing policy is not Board Minute Dated and therefore becomes difficult, if not impossible, to track back to the board members; too many of the written documents lack any authorizing signature or initial; some policy lacks any subject heading; and there is a lack of consolidation of policy as it relates to the same subject matter.

With regard to the existing written policy and practice, we would make specific recommendations as follows:

RECOMMENDATION P-78

THE POLICY AND PRACTICE REFERENCED HEREIN MAY BE FOUND IN APPENDIX "H" ATTACHED HERETO AND IN THE ORDER REFERENCED HERE.

1) *POLICY ON REGISTRATION OF EMPLOYERS:*

THE USE OF THE WORD "ASSUME" IN THE SECOND PARAGRAPH IS TOO TENTATIVE AND DOES NOT REFLECT THE NECESSARY DETERMINATION THAT THE EMPLOYER IS OPERATING OR IS NOT OPERATING AND WE WOULD RECOMMEND THAT SUCH WORDING AS THE FOLLOWING BE UTILIZED INSTEAD: "WHEN IT IS DETERMINED THAT THE PERSON(S) ARE NOT EMPLOYERS, THE BOARD SHALL DISCONTINUE CORRESPONDENCE BUT SHALL MAINTAIN ON FILE ALL PREVIOUS CORRESPONDENCE FOR POTENTIAL FUTURE REFERENCE."

THIS TENTATIVE WORDING STYLE IS TO BE FOUND IN OTHER WRITTEN POLICY AND WE WOULD RECOMMEND THAT THE BOARD REVERT TO A CERTAIN AND PRECISE STYLE IN WRITING ITS' POLICY IN THE FUTURE.

AS WELL, THIS POLICY SHOULD CLEARLY SET OUT THE ESTABLISHED PROCESS OF COLLECTING OUTSTANDING ASSESSMENTS AND REFERENCE THE THREE STAGES WHICH THE BOARD FOLLOWS IN ATTEMPTING TO COLLECT SUCH MONIES, i.e. (1) CORRESPONDENCE AND TELEPHONE; (2) LAWYERS LETTER AND (3) FILE A JUDGEMENT.

2) *POLICY ON CLASSIFICATION:*

IN RECOMMENDATION L-57 WE MAKE A SPECIFIC RECOMMENDATION THAT THE BOARD SHOULD NOT "DIVIDE OR SPLIT" AN INDUSTRY INTO MORE THAN ONE CLASS. THIS POLICY SHOULD BE UP-DATED TO ESTABLISH THIS PRACTICE IN THE FUTURE.

3) *POLICY ON EMPLOYERS COVERAGE:*

PARAGRAPH TWO OF THIS POLICY SHOULD, IN FACT, BE THE OPENING PARAGRAPH AS IT ESTABLISHES THE FACT THAT SUCH COVERAGE, AS A FIRST STEP, MUST BE REQUESTED BY THE INDIVIDUAL SEEKING THE COVERAGE.

IN ADDITION, WE WOULD ENCOURAGE THE BOARD TO REFRAIN FROM USING SUCH POSSESIVE PRONOMINAL ADJECTIVES IN ITS' POLICY AS ILLUSTRATED HERE IN THE SECOND PARAGRAPH, i.e. "OUR". IT WOULD BE MORE PRECISE, CLEAR AND UNDERSTANDABLE TO CONSISTENTLY REFER TO THE "BOARD" IN SUCH CIRCUMSTANCES.

4) *POLICY ON EMPLOYERS COVERAGE PRO-RATE ASSESSMENT:*

THE SECOND PARAGRAPH OF THIS POLICY IS AN EXCELLENT ILLUSTRATION OF OUR CONCERN OF THE USE OF CONVOLUTED AND DIFFICULT TO UNDERSTAND LANGUAGE. SUCH IS NEXT TO IMPOSSIBLE FOR THE UNINITIATED TO INTERPRET AND UNDERSTAND.

THIS POLICY NEEDS TO BE COMPLETELY RE-WRITTEN WITH PARTICULAR REGARD TO USING LANGUAGE THAT WILL BE ABLE TO BE INTERPRETED AND UNDERSTOOD BY ANY WHO MIGHT READ IT.

5) *POLICY ON CLEARANCES/LETTERS OF GOOD STANDING:-*

THERE ARE TERMS WHICH THE BOARD UTILIZED IN THE WRITING OF THIS POLICY, WHICH ARE NOT DEFINED AND THEREFORE CONTRIBUTE TO CONFUSION AND MISUNDERSTANDING. FOR EXAMPLE, "CLEARANCE OR LETTER OF GOOD STANDING", AND "PRINCIPAL" ARE TERMS WHICH SHOULD BE DEFINED.

IN FACT A REFERENCE TO SECTION 73(1) OF THE ACT COULD HELP IN THE INTERPRETATION OF THE TERM "PRINCIPAL".

6) *POLICY ON COLLECTION:*

IN ITS DISCUSSIONS WITH THE ADMINISTRATION OF THE BOARD REGARDING THIS POLICY, COMMITTEE MEMBERS WERE CONCERNED ABOUT THE USE OF THE WORD "SHOULD" IN (iv). WE WERE ADVISED THAT THE BOARD DOES NOT, IN ALL CASES, STRICTLY ADHERE TO THE POLICY.

THE COMMITTEE RECOMMENDS THAT THE WORD "SHOULD" BE DELETED AND THAT "SHALL" BE SUBSTITUTED. THEREFORE WE RECOMMEND FURTHER THAT A CONSISTENT PRACTICE OF BEGINNING JUDGEMENT PROCEDURES IN SUCH CIRCUMSTANCES BE CONSISTENTLY APPLIED.

7) POLICY - *FORM LETTER ARBITRARY ASSESSMENT NOTICE:*

THE COMMITTEE HOLDS SOME CONCERN WITH THE WAY PARAGRAPH THREE OF THIS FORM LETTER IS WRITTEN. WE FEEL THAT THE APPROACH TAKEN IS MUCH TOO SOFT, UNDER THESE CIRCUMSTANCES, AND IS NOT REFLECTIVE OF THE FACT THAT REGISTRATION IS A REQUIREMENT.

WE WOULD RECOMMEND THAT THIS PARAGRAPH BE WRITTEN IN A MORE ASSERTIVE MANNER e.g. "TO DATE, YOUR REGISTRATION, WHICH IS REQUIRED BY LAW, HAS NOT BEEN RECEIVED BY THE BOARD AND THEREFORE YOU LEAVE THE BOARD NO ALTERNATIVE BUT TO COMMENCE THE ABOVE STATED PROCESS."

8) *POLICY ON LEVYING OF SERVICE CHARGES:*

RECOMMENDATION L-63 SETS OUT THAT INTEREST ASSESSED AGAINST DELINQUENT PAYMENTS SHALL NOT EXCEED THE PRIME BANK RATE PLUS 2%. THIS POLICY SHOULD BE RE-WRITTEN TO REFLECT THE RECOMMENDATION.

IN PARAGRAPH THREE THE WORD "VOLUNTARILY" APPEARS. WE WOULD RECOMMEND THAT THE WORD BE DELETED FROM THE TEXT.

9) *POLICY ON LATE FILING PENALTIES:*

RECOMMENDATION L-73 WOULD CHANGE THE LEVEL OF THE FINE AND IF ADOPTED INTO LEGISLATION THE BOARD MUST MAKE THE NECESSARY AMENDMENTS TO THE POLICY.

AS WELL, WE WOULD RECOMMEND THAT THE SPECIFIC SECTION OF THE ACT BE REFERENCED IN THE POLICY, i.e. SECTION 47(9) AND THAT THE REFERENCE TO SECTION 61 BE AMENDED TO READ SECTION 60 IN ACCORD WITH THE REVISED STATUTE.

10) *POLICY ON MINIMUM ANNUAL ASSESSMENTS:*

THE COMMITTEE IS PREPARED TO RECOMMEND THAT THE MINIMUM ASSESSMENT REFERENCED HERE BE AMENDED AS FOLLOWS:

i) $25.00 TO READ $50.00, AND

ii) $50.00 TO READ $100.00.

THE PRESENT MINIMUMS DO NOT MEET THE COSTS OF ADMINISTRATION.

AGAIN, THE POLICY SHOULD BE RE-DRAFTED AND WRITTEN IN A MORE PRECISE AND CLEAR MANNER.

11) *POLICY ON CLOSE-OUTS:*

RECOMMENDATION L-19 RECOMMENDS UNIVERSAL COVERAGE OF WORKERS' COMPENSATION ON ALL WORKERS IN THE PROVINCE. WHEN ADOPTED BY THE LEGISLATURE, THE BOARD MUST AMEND THIS POLICY BY DELETING iv).

12) *POLICY ON OVER PAYMENTS:*

THE MAJOR CONCERN WITH THIS POLICY RELATES TO THE TERMINOLOGY AND THE TYPING ERRORS:

i) FIRST PARAGRAPH: "RETURN TO OVERPAYMENT REQUESTED", SHOULD READ "REQUESTED TO RETURN THE OVERPAYMENT".

ii) SECOND PARAGRAPH: "WITH THE INJURY EMPLOYER", SHOULD READ "WITH THE PRE-INJURY EMPLOYER".

iii) THIRD PARAGRAPH: SHOULD BE COMPLETELY REDRAFTED, e.g.: "SHOULD THE WORKER IGNORE THE REQUEST OF THE BOARD TO RETURN THE OVERPAYMENT AND HE RETURNS TO WORK WITH A DIFFERENT EMPLOYER; OR, WHERE THE BOARD IS UNABLE TO CONTACT HIM, THE RECORD WILL BE MAINTAINED ON FILE AND THE OVERPAYMENT SHALL BE DEDUCTED FROM ANY FUTURE CLAIM WHICH THE WORKER MAY FILE WITH THE BOARD."

13) *POLICY ON OVERPAYMENTS:*

THIS POLICY SHOULD BE CLEARLY DISTINGUISHABLE FROM THE FOREGOING POLICY. SUCH CAN BE ACHIEVED SIMPLY BY ADDING A WORD OR TWO IN THE HEADING, e.g. "OVERPAYMENT - CLAIMANT" AND "OVERPAYMENT - INSTITUTIONAL OR PROFESSIONAL".

THE SECOND SENTENCE IS DIFFICULT TO INTERPRET AND UNDERSTAND AND NEEDS TO BE RE-DRAFTED.

14) *POLICY AND PROCEDURE:*

IT IS FELT THAT THE HEADING TO THIS POLICY IS TOO GENERAL IN NATURE AND SHOULD, INSTEAD, REFLECT THE INTENT MORE SPECIFICALLY, e.g. "ADDICTIVE MEDICATIONS".

WE WOULD RECOMMEND THAT THIS POLICY BE RE-WRITTEN IN A MANNER WHICH WOULD CLEARLY AND CONCISELY REFLECT THE PRACTICE OF THE BOARD IN THIS REGARD, e.g.:

"IT IS THE POLICY OF THE WORKERS' COMPENSATION BOARD THAT ADDICTIVE MEDICATIONS SUCH AS HALCION, ATIVAN, VALIUM AND ELAVIL ARE MEDICATIONS WHICH SHOULD ONLY BE USED ON A SHORT

TERM BASIS. THE BOARD WILL ONLY PAY FOR SUCH MEDICATIONS DURING ACCUTE STAGES OF DISABILITY. MEDICATIONS OF THIS CLASS WILL NOT BE COVERED BY THE BOARD FOR UNDEFINED AND INDEFINITE PERIODS OF TIME AND WILL ONLY BE COVERED AFTER A MEDICAL ASSESSMENT HAS DETERMINED THAT THE CASE IS ONE OF ACUTE PAIN AND THE DURATION PROPOSED FOR TAKING THE MEDICATION IS CLEARLY DEFINED. WHEN MEDICATIONS IN THIS CLASS ARE PRESCRIBED, ALL PRESCRIPTIONS WILL BE MAINTAINED IN THE INDIVIDUAL FILE AND FLAGGED TO THE ATTENTION OF THE MEDICAL OFFICER FOR PURPOSES OF CASE REVIEWS."

15) *POLICY:*

AGAIN, THE HEADING IS VERY GENERAL IN NATURE AND SHOULD RATHER REFLECT THE SPECIFIC NATURE OF THE POLICY, e.g. "LONG TERM MEDICATIONS".

THE POLICY NEEDS TO BE RE-DRAFTED TO CLEARLY AND CONCISELY REFLECT THE PRACTICE OF THE BOARD IN THIS REGARD.

16) *POLICY - PHONE CALLS:*

THE HEADING TO THIS POLICY WOULD MORE APPROPRIATELY BE, "LONG DISTANCE PHONE CHARGES".

DUE TO THE FACT THAT THE BOARD HAS A TOLL FREE NUMBER WHICH WAS MOST RECENTLY ACQUIRED, THIS POLICY SHOULD BE RE-WRITTEN TO REFLECT THAT FACT AND ALSO THE NUMBER, 368-5680, SHOULD BE INCORPORATED INTO THE POLICY.

17) *POLICY - HANDBOOKS:*

THE HEADING SHOULD BE CHANGED TO REFLECT A BROADER LIST OF PUBLICATIONS WHICH SHOULD BE GENERATED BY THE BOARD DUE TO THE RECOMMENDATIONS OF THE COMMITTEE, e.g. "HANDBOOKS, MANUALS AND BROCHURES".

THE REFERENCE TO A SPECIFIC CHARGE TO DEPOSIT AGENCIES, AS PER PARAGRAPH TWO, SHOULD BE DELETED AND A MORE GENERAL STATEMENT SHOULD BE INSERTED HERE, e.g.:

"WHENEVER GOVERNMENT OR ANY DEPOSIT AGENCY REQUESTS COPIES OF BOARD HANDBOOKS, MANUALS OR BROCHURES, THEY SHALL BE INFORMED THAT THERE IS A CHARGE PER COPY. THE CHARGE PER COPY SHALL REFLECT THE COST OF THE MATERIALS TO THE BOARD."

18) *POLICY - HOMECARE POLICY:*

THIS POLICY NEEDS TO BE RE-WRITTEN, AGAIN, TO CLEARLY AND CONCISELY REFLECT THE INTENT OF THE BOARD, e.g.:

PARAGRAPH THREE - "THE PROVISION OF ATTENDANTS WILL BE CONSIDERED ON THE BASIS OF A PHYSICAL AND PSYCHOLOGICAL ASSESSMENT AND A DETERMINATION OR FINDING THAT AN ATTENDANT(S) IS NECESSARY."

PARAGRAPH FOUR - THE LAST SENTENCE AS IT EXISTS IS CONFUSING AND NEEDS TO BE RE-WRITTEN TO REFLECT CLEARLY AND CONCISELY THE INTENT OF THE BOARD.

PARAGRAPH EIGHT - THIS PARAGRAPH SHOULD REFLECT THE TERMINOLOGY AND INTENT OF RECOMMENDATION L-12.

19) *POLICY ON PHYSIOTHERAPY TREATMENT:*

THIS POLICY IS WRITTEN IN SUCH A MANNER AS TO SUGGEST THAT A REVIEW DOES NOT TAKE PLACE PRIOR TO THE TWENTY-FIRST VISIT. IN PRACTICE THIS IS NOT THE CASE, AS A REVIEW CAN, AND SHOULD, TAKE PLACE AT ANY TIME IN THE PROCESS.

WE WOULD RECOMMEND THAT THE POLICY BE RE-WRITTEN TO REFLECT THE FACT THAT A REVIEW MAY TAKE PLACE AT ANY TIME IN THE PROCESS AND THAT A REVIEW WILL DEFINITELY TAKE PLACE AFTER THE TWENTY-FIRST VISIT.

20) *POLICY: GLASSES AND SECOND POLICY:*

THE TWO POLICIES WITH PAGE NUMBERS 46 AND 47 WRITTEN IN PEN SHOULD BE INCORPORATED INTO A SINGLE POLICY STATEMENT.

IN THE FIRST PARAGRAPH (46) THE WORDS "WHILE ON THE FACE OF THE WORKER" SHOULD BE DELETED AND THE FOLLOWING SUBSTITUTED, "WHILE BEING WORN BY THE WORKER".

THE POLICY, AS WELL, SHOULD REFERENCE CONTACT LENSES.

21) *POLICY ON BRACES AND PROSTHETICS:*

WE BELIEVE THAT WHERE THE ACT IS REFERENCED IN ANY POLICY, THEN THE SPECIFIC SECTION OF THE ACT WHICH APPLIES SHOULD BE CITED IN THE POLICY. THIS WILL AID CLIENTS IN INTERPRETING AND UNDERSTANDING THE POLICY AND THE LEGISLATION.

22) *POLICY ON U.I.C. WORK PROJECT - "POLICY 1984":*

WE WOULD RECOMMEND THAT EACH POLICY HAVE A SPECIFIC HEADING WHICH MAY BE REFERRED TO IN INDENTIFYING A SPECIFIC POLICY. THIS POLICY DOES NOT HAVE ANY HEADING OTHER THAN THE "POLICY 1984" NOTATION.

WHERE THE POLICY REFERS TO $17,000 IN PARAGRAPH ONE, IT WOULD, WE BELIEVE, BE MORE APPROPRIATE TO REPLACE THE SPECIFIC DOLLAR AMOUNT WITH THE REFERENCE "MAXIMUM COMPENSABLE YEARLY SALARY" AND REFERENCE THE SECTION OF THE ACT WHICH CONTAINS THE DEFINITION AND THE MANNER IN WHICH THE M.C.Y.S. IS DETERMINED.

THE REFERENCE TO SECTION 46(2) OF THE ACT SHOULD BE AMENDED TO READ SECTION 45(2) DUE TO STATUTORY REVISION.

23) *POLICY ON WITNESSES - "BOARD POLICY":*

AGAIN THERE IS NO SPECIFIC HEADING SO AS TO BE ABLE TO IDENTIFY THIS POLICY BY A TOPIC.

WE WOULD RECOMMEND THAT THIS POLICY BE RE-WRITTEN TO REFLECT THE FACT THAT BOARD PERSONNEL SHALL INTERVIEW ALL WITNESSES AND TO CLEARLY AND PRECISELY ESTABLISH THE PROCESS WHERE WITNESSES ARE INVOLVED.

24) *POLICY ON STRESS:*

WE WOULD RECOMMEND THAT THE HEADING TO THIS POLICY SHOULD BE "PHYSICAL TRAUMA INDUCED STRESS".

THE COMMITTEE IS ADVISED THAT STRESS RELATED TO PSYCHOLOGICALY INDUCED STRESS IS CONSIDERED TO BE COVERED IN THE INDUSTRIAL DISEASES.

THIS PRESENT POLICY ON STRESS RELATES SPECIFICALLY TO CASES WHERE PHYSICAL INJURY HAS OCCURRED AND THE RESULTING TRAUMA ASSOCIATED WITH THE INJURY RESULTS IN STRESS RELATED HYPERTENSION RESULTING IN STROKE, FOR EXAMPLE.

WE WOULD RECOMMEND THAT THE POLICY BE RE-WRITTEN TO CLEARLY AND PRECISELY SET OUT THE POLICY AS WE HAVE BEEN BRIEFED BY THE BOARD.

THE COMMITTEE RECOMMENDS FURTHER THAT A SPECIFIC POLICY BE WRITTEN FOR THE SECOND STRESS SITUATION, i.e. PSYCHOLOGICAL.

25) *POLICY ON ALLERGIES - NO HEADING:*

THERE IS NO HEADING TO THIS POLICY AND SUCH APPEARS TO BE A FREQUENT OVERSIGHT.

THE THIRD PARAGRAPH, WE BELIEVE, PLACES A PARTICULARLY HEAVY ONUS ON THE INJURED WORKER.

WE ARE INFORMED THAT THE POLICY OF THE BOARD, AT PRESENT, IS TO INVOLVE THE INJURED WORKER, WHO HAS EXPERIENCED CONTINUED PROBLEMS IN THE EXISTING WORKPLACE, IN A PROGRAM OF VOCATIONAL REHABILITATION SO AS TO PROVIDE THE WORKER WITH THE OPPORTUNITY OF FUTURE EMPLOYMENT AWAY FROM THE WORK ENVIRONMENT WHICH IS CAUSING THE PROBLEM.

WE BELIEVE THIS IS APPROPRIATE AND PROPER ACTION IN SUCH CASES.

THE COMMITTEE WOULD RECOMMEND THAT THIS POLICY BE REWRITTEN TO REFLECT THIS PRACTICE.

26) *POLICY ON EDUCATION:*

THE COMMITTEE HOLDS PARTICULAR CONCERN WITH REGARD TO VOCATIONAL REHABILITATION AS MAY BE GARNERED FROM OUR RECOMMENDATION L-33 EARLIER IN THIS REPORT.

WE ARE CONVINCED THAT A GREATER EMPHASIS MUST BE PLACED ON THIS WHOLE AREA OF REHABILITATION OF INJURED WORKERS.

THEREFORE WE WOULD RECOMMEND THAT THIS POLICY BE ENTITLED *"VOCATIONAL REHABILITATION"* AND RATHER THAN HAVE A SINGLE PAGE OF POLICY WE ARE RECOMMENDING THAT A "POLICY MANUAL" ON VOCATIONAL REHABILITATION BE WRITTEN AND CONTAIN ALL OF THE NECESSARY DETAIL AS IT RELATES TO THE SUBJECT.

FOR PURPOSES OF GUIDANCE TO THE BOARD IN DRAFTING SUCH A MANUAL, WE WOULD DIRECT THEM TO PAGE 102 OF THE *REPORT OF THE WORKERS' COMPENSATION REVIEW COMMITTEE,* MANITOBA, MAY, 1987.

WE WOULD PARTICULARLY DIRECT THE BOARD'S ATTENTION TO PAGES 105 AND 106 WHERE CONSIDERABLE DETAIL IS SET OUT WITH REGARD TO THE TABLE OF CONTENTS OF SUCH A MANUAL.

FOR THE BENEFIT OF ANYONE WHO MAY READ THIS REPORT AND WHO MAY NOT HAVE ACCESS TO THE MANITOBA REPORT, WE WOULD INCLUDE HERE THE TOPIC HEADINGS CONTAINED THEREIN:

CHAPTER 1 - INTRODUCTION

CHAPTER 2 - CURRENT REHABILITATION POLICY

CHAPTER 3 - RELEVANT LEGISLATION

CHAPTER 4 - REHABILITATION SERVICES

CHAPTER 5 - THE PROCESS OF REHABILITATION

CHAPTER 6 - ATTENDANT'S ALLOWANCE

CHAPTER 7 - CLOTHING ALLOWANCE

CHAPTER 8 - PREVENTATIVE REHABILITATION

CHAPTER 9 - PROCEDURE FOR WORKERS LEAVING THE PROVINCE

AND THE TRAINING MANUAL PROVIDES THE FOLLOWING CHAPTER TOPICS:

CHAPTER 1 - INTRODUCTION

CHAPTER 2 - THE GOALS OF REHABILITATION

CHAPTER 3 - THE DUTIES AND FUNCTIONS OF THE VOCATIONAL REHABILITATION COUNSELLOR

CHAPTER 4 - THE DUTIES AND FUNCTIONS OF THE REHABILITATION OFFICER

CHAPTER 5 - GENERAL CASEWORK PROCEDURES

CHAPTER 6 - REPORTING FORMATS

CHAPTER 7 - REFERRAL PROCEDURES

CHAPTER 8 - ADJUDICATION AND APPEAL

CHAPTER 9 - ATTENDANTS ALLOWANCE

CHAPTER 10 - CLOTHING ALLOWANCE

CHAPTER 11 - CRIMINAL INJURIES COMPENSATION BOARD

CHAPTER 12 - DISCLOSURE OF INFORMATION

CHAPTER 13 - PAYMENT OF BENEFITS

CHAPTER 14 - WORKING FILES

CHAPTER 15 - EXPENSE CODES

CHAPTER 16 - DEPARTMENTAL RELATIONSHIPS

CHAPTER 17 - MENTALLY DISORDERED PERSONS

CHAPTER 18 - ADVOCACY GROUPS

IT IS NO DOUBT RECOGNIZED THAT THE COMMITTEE IS PARTICULARLY IMPRESSED WITH THE FINDINGS AND ILLUSTRATIONS WITHIN THE MANITOBA REPORT. WE MUST SAY THAT IT IS OUR OPINION THAT THIS REPORT IS CAPABLY RESEARCHED AND WRITTEN AND THEREFORE APPROPRIATE FOR OUR PURPOSES, WHERE IT FITS THE LOCAL SITUATION.

IT IS FITTING, AS WELL, THAT WE HIGHLIGHT THE *GOALS OF REHABILITATION* AS SET OUT IN THE MANITOBA REPORT AND RECOMMEND THEM TO THE BOARD LOCALLY:

1) RETURN TO WORK, ACCIDENT EMPLOYER, ORIGINAL JOB.

2) RETURN TO WORK, ACCIDENT EMPLOYER, DIFFERENT JOB.

3) RETURN TO WORK, DIFFERENT EMPLOYER IN RELATED INDUSTRY.

4) RETURN TO WORK, DIFFERENT EMPLOYER, DIFFERENT JOB.

5) TRAINING ON-THE-JOB, DIFFERENT EMPLOYER, DIFFERENT J0B.

6) ACADEMIC RE-TRAINING.

27) *POLICY ON INVESTIGATIONS:*

AGAIN WE WOULD RECOMMEND THAT THE HEADING SHOULD CLEARLY SET OUT THE INTENT OF THE POLICY, i.e. "CLAIMS INVESTIGATIONS".

WE WOULD ENCOURAGE THE BOARD TO WRITE A POLICY THAT CLEARLY ESTABLISHES A REGULAR PROCEDURE FOR INVESTIGATING CLAIMS AND TO RE-AFFIRM THAT THE ONUS IS UPON THE BOARD ITSELF TO DETERMINE THE VALIDITY OF CLAIMS, TO OBTAIN STATEMENTS OF INJURED WORKERS, OF EMPLOYERS AND OF WITNESSES ALIKE; AND TO RE-AFFIRM THAT IT IS NOT THE OBLIGATION OF THE INJURED WORKER TO PROVE, NOR THE OBLIGATION OF THE EMPLOYER TO DISPROVE ANY ACCIDENT CLAIM.

INVESTIGATIONS ARE, AND SHOULD REMAIN, FACT FINDING MISSIONS.

28) *POLICY ON PRACTICE:*

THIS POLICY REFERENCES THE "CASE REVIEW COMMITTEE" AND SHOULD BE HEADED AS SUCH.

AS EXPLAINED TO THE COMMITTEE, THIS COMMITTEE IS REPRESENTATIVE OF KEY PERSONNEL FROM THE VARIOUS DIVISIONS, e.g. REHABILITATION, CLAIMS, PENSION AND ADMINISTRATION.

THE PURPOSE OF THE COMMITTEE IS TO REGULARLY REVIEW PARTICULAR CASES AND TO ENSURE FOLLOW-UP IN SPECIFIC MATTERS.

WE FEEL THAT THE PRACTICE IS APPROPRIATE AND BENEFICIAL TO THE SYSTEM AND WOULD RECOMMEND THAT IT BE A CONTINUED PRACTICE.

HOWEVER WE FEEL THAT THE POLICY, AS WRITTEN, LACKS DETAIL AND SPECIFICS AND THEREFORE SHOULD BE RE-WRITTEN TO CLEARLY AND PRECISELY DETAIL THE REPRESENTATION ON THE COMMITTEE; TO ESTABLISH A REGULAR MEETING TIME; AND TO SET OUT ITS PURPOSE AND AUTHORITY WITHIN THE SYSTEM.

29) *POLICY ON PROCEDURE:*

THIS POLICY, AS WE UNDERSTAND IT, DEALS WITH THE MATTER OF APPEALS FROM DECISIONS OF THE BOARD RELATED TO CLAIMS AND SERVICES.

WE WOULD STRONGLY RECOMMEND THAT A *"POLICY MANUAL"* WITH REGARD TO *"APPEALS"* BE DEVELOPED BY THE BOARD WITH THE NECESSARY DETAIL OF PROCEDURE, OBLIGATIONS AND RIGHTS. A MANUAL, WE SUGGEST, SIMILAR TO OUR RECOMMENDATION ON VOCATIONAL REHABILITATION.

WE WOULD DIRECT THE BOARD'S ATTENTION TO OUR RECOMMENDATION L-44 HEREIN, WHEN THEY COMMENCE DRAFTING THE POLICY MANUAL.

30) *POLICY ON APPEAL PROCEDURE:*

OUR COMMENTS AND RECOMMENDATIONS IN 29 ABOVE WOULD APPLY HERE AS WELL.

31) *POLICY ON FEES FOR SERVICE:*

WE WOULD RECOMMEND THAT THIS POLICY BE RE-WRITTEN WITH SPECIAL REGARD TO OUR RECOMMENDATION L-39 - CHIEF EXECUTIVE OFFICER.

THE COMMITTEE WOULD RECOMMEND THAT THE C.E.O. AND THE DIRECTOR OF FINANCE BE INVOLVED IN THESE NEGOTIATIONS AND NOT THE CHAIRMAN OF THE BOARD.

BECAUSE THE FINAL APPROVAL OF ANY NEGOTIATIONS RESTS WITH THE BOARD AS A WHOLE, TO HAVE THE CHAIRMAN INVOLVED DIRECTLY IN THE NEGOTIATIONS WOULD TAINT HIS OBJECTIVITIY WHEN THE MATTER FINALLY COMES TO THE BOARD FOR ITS' APPROVAL.

WORK AT THIS LEVEL IS MORE APPROPRIATELY THE RESPONSIBLITY OF THE ADMINISTRATION.

32) *POLICY ON MEDICAL AID:*

AS WE RECOMMENDED WITH REGARD TO VOCATIONAL REHABILITATION (26) WE WOULD RECOMMEND A SIMILAR PRACTICE WITH REGARD TO MEDICAL AID, i.e. THAT A *"MEDICAL AID MANUAL"* BE DRAFTED AND PUBLISHED WITH SIMILAR CONTENT AS SET OUT IN THE *MANITOBA REPORT*, PAGE 134:

TABLE OF CONTENTS

1) PROFESSIONAL SERVICES
2) SERVICES PROVIDED
3) TRAVEL AND LODGING
4) APPLIANCES
5) PURCHASED ITEMS
6) MISCELLANEOUS
7) BOARD DIRECTIVES/ORDERS

33) *POLICY ON CHIROPRACTIC CARE:*

THIS POLICY SHOULD BE INCORPORATED INTO THE *MEDICAL AID MANUAL.*

34) *POLICY ON MEDICAL AID COSTS:*

THIS POLICY NEEDS TO BE RE-WRITTEN WITH GREATER CLARITY AND PRECISION AND INCORPORATED INTO THE *MEDICAL AID MANUAL.*

35) *POLICY ON RELEASE OF INFORMATION, FINANCE, ADMINISTRATION, ETC.*

IN COMPLIANCE WITH OUR EARLIER RECOMMENDATIONS ON OPENESS AND ACCESS TO INFORMATION, WE ARE RECOMMENDING THAT ALL INFORMATION OF A FINANCIAL AND ADMINISTRATIVE (POLICY-PRACTICE) NATURE SHOULD BE DISCLOSED TO THE PERSON ENQUIRING *SO LONG AS SUCH INFORMATION DOES NOT BREACH ANY REQUIRED CONFIDENTIALITY OR DISCLOSE INFORMATION ON ANOTHER PERSON OR EMPLOYER, WHO IS NOT THE PERSON OR EMPLOYER WHO IS MAKING THE ENQUIRY.*

FOR EXAMPLE: THE BOARD SHOULD NEVER DISCLOSE TO PERSON OR EMPLOYER "X", INFORMATION ON PERSON OR EMPLOYER "Y", UNLESS PERSON OR EMPLOYER "Y" PROVIDES HIS PERMISSION IN WRITING.

36) *POLICY ON RELEASE OF INFORMATION:*

WE WERE ADVISED DURING THE PROCESS OF OUR DECISION MAKING THAT THE BOARD HAD ADOPTED A NEW POLICY ON THE RELEASE OF INFORMATION IN THESE CIRCUMSTANCES.

THE COMMITTEE HAD THE OPPORTUNITY TO REVIEW THIS POLICY, *AFTER IT HAD BEEN ADOPTED*. WE HAD A FEW CONCERNS AS IT RELATED TO FORMS AND CERTAIN WORDING. WE CONVEYED THESE CONCERNS TO THE BOARD AND WE ARE HOPEFUL THAT THE BOARD WILL ADDRESS THEM.

WE WOULD DIRECT THE BOARDS' ATTENTION TO OUR RECOMMENDATION L-65 WITH PARTICULAR REGARD TO PARTS (B)(iv), (vi), (vii), (viii), AND (ix) AS THESE PARTICULAR CONCERNS ARE NOT ENTIRELY MET BY THE NEW POLICY.

37) *POLICY ON CLAIMENT COMPLAINT REPORTS*

THERE IS SOME CONCERN HELD THAT ANY COMPLAINT RECEIVED BY THE BOARD CONCERNING ANY CLAIMANT, WHERE THE COMPLAINANT REFUSES TO IDENTIFY HIMSELF/HERSELF, SHOULD BE CAUTIOUSLY AND CAREFULLY ENTERTAINED, IF AT ALL.

ANY APPROACH MADE TO A CLAIMANT BY THE BOARD, REGARDING ANY COMPLAINT RECEIVED, MUST BE HANDLED WITH CARE, CONCERN AND TACT.

IT IS OBVIOUS THAT IN CERTAIN CASES WHERE THE COMPLAINANT ALLEGES BLATANT MISCONDUCT ON THE PART OF THE CLAIMANT, THE BOARD HAS AN OBLIGATION TO INVESTIGATE THE MATTER TO THE BEST OF ITS ABILITY.

WE WOULD RECOMMEND THAT THE POLICY BE RE-WRITTEN WITH THESE COMMENTS AND CONCERNS IN MIND.

38) *POLICY ON SOLICITORS AND SECOND PERSON INQUIRIES:*

DUE TO THE FACT THAT A NEW POLICY HAS BEEN ADOPTED WITH REGARD TO THE RELEASE OF INFORMATION AND WITH DUE REGARD TO OUR RECOMMENDATION L-65 HEREIN, WE RECOMMEND THAT THIS POLICY BE REPEALED IMMEDIATELY.

39) *POLICY ON REFERRAL CONSULTATIONS:*

IT IS NOTED THAT THE POLICY LACKS AN APPROPRIATE HEADING AND WE WOULD RECOMMEND THAT THE POLICY, RE-WRITTEN, BE INCORPORATED INTO THE "MEDICAL AID MANUAL".

40) *POLICY ON REFERRALS - JANUARY 26, 1989:*

SIMILARLY WE WOULD RECOMMEND THAT THIS POLICY BE INCORPORATED INTO THE *"MEDICAL AID MANUAL"*.

41) *POLICY ON STRAINS, ETC. FOR MECHANICAL CONDITIONS:*

THIS POLICY NEEDS TO BE RE-WRITTEN AND CARE GIVEN TO DEFINING "MECHANICAL CONDITIONS"; AND, CLEARLY AND PRECISELY SETTING OUT THE INTENT, e.g.

"SIX MONTHS AFTER A CLAIM IS CLOSED; AND, WHERE THERE IS NO EVIDENCE OF ANY CONTINUING TREATMENT; AND, WHERE, AT THE TIME THE CASE WAS CLOSED, THERE WAS NO MEDICAL INDICATION THAT THERE IS, OR THERE IS THE POTENTIAL THAT THERE COULD BE, AN ON-GOING PERMANENT DISABILITY, THEN ANY APPLICATION TO RE-OPEN THE CLAIM OR TO CLAIM ANY ADDITIONAL TREATMENTS OR SERVICES WILL BE DENIED UNLESS THERE IS EVIDENCE OF A NEW INCIDENT.

42) *POLICY ON REPETITIVE STRESS INJURIES:*

THE POLICY NEEDS TO BE UP-DATED TO MEET OUR RECOMMENDATION L-2 WHEN IT IS ADOPTED INTO LAW AND, NEVERTHELESS, NEEDS TO BE AMENDED TO REFERENCE THE SPECIFIC SECTION OF THE ACT REFERRED TO IN THE DEFINITION OF ACCIDENT, i.e. SECTION 1(a).

43) *POLICY ON LIGHT DUTY PROGRAMS:*

THIS POLICY NEEDS TO BE RE-WRITTEN SO AS TO PROVIDE GREATER CLARITY AND UNDERSTANDING, e.g. THE REFERENCE TO AN INITIAL VISIT SHOULD CLEARLY STATE "BY A COUNSELLOR AND AT THE WORKPLACE OF THE WORKER"; AND PERSONNEL NAMES MUST BE DELETED FROM POLICY AND REPLACED WITH THE JOB TITLE OF THE PERSON WHOM HAS THE RESPONSIBLIITY IN THIS REGARD; AND, "CASE STUDY" SHOULD SPECIFICALLY REFERENCE THE "CASE REVIEW COMMITTEE" (SEE NO. 28).

44) *POLICY ON CONFINEMENT TO DETOX CENTRE:*

THIS POLICY SHOULD BE RE-WRITTEN WITH REGARD TO OUR RECOMMENDATION L-55 HEREIN AND SHOULD BE RE-WRITTEN TO CLEARLY AND PRECISELY ESTABLISH THE INTENT, e.g. "ANY CASE CONFINED TO A DETOX CENTRE" SHOULD READ "ANY CLAIMANT (OR INJURED WORKER) CONFINED TO A DETOX CENTRE"; AND "CASE MANAGEMENT PANEL" SHOULD READ "CASE REVIEW COMMITTEE" FOR CONSISTENCY (SEE NO. 28).

CLASSIFICATION OF INDUSTRIES

During the public hearings segment of our review we were presented with a number of recommendations, by employers, to increase the number of classes and to place such workers as office and clerical, in a different class with lower assessment rates than presently is the case.

The prevalent feeling among these presenters was that certain workers, such as clerical and office workers, being a small segment of a larger workforce overall, should be in lower rated classes, due to the fact that their work environment is healthier and safer than their fellow workers in construction or manufacturing, for example.

There presently exist nine classes as established by decision of the Board over the years. Among these nine classes are two general groupings, i.e. assessment group (classes 1 to 5) and deposit account group (classes 6 to 9). A description of the first five classes (or assessment group) is to be found in a pamphlet published by the Board entitled, "Classifications of Industries and Provisional Assessment Rates" (Appendix "I").

The deposit account group comprises the Provincial Government, C.N.R. and Marine Atlantic, the Canadian Government and Northumberland Ferries Ltd.

Based on an actuarial study, classes 1 to 5 are assessed at specific rates for each $100 of payroll to a maximum individual wage ceiling of $23,000. These rates are set out in the aforementioned pamphlet (Appendix "I").

Classes 6 to 9 deposit with the Board, a pre-arranged amount which is intended to meet the cost of any claim made upon that employer and subsequently the employer is billed for the actual costs of any claim and, in addition, is charged a 12.5% administration fee. These classes do not pay on an assessment basis.

Any claim made against an employer in classes 1 through 5 is paid out of the Collective's accident fund, which is established from the assessments of the group.

The Committee discussed, at length, the whole question of class determination and the deposit account system.

Our research does indicate that: 1) all employers who are required to be registered with the Board are classified into established industrial groups for assessment purposes, 2) classifications are established on the basis of industrial undertaking and not on the basis of the occupation of workers, 3) an industrial classification includes all occupations within the industry, including office and clerical staff, and 4) separate classifications for an individual employer are warranted if the employer has operations which are distinctly different or separate from one another.

We are advised that the present system was established to maintain the financial viability and stability of the Collective's funds.

As well, we have been advised that the act of creating extra classes, simply for the reason of reducing the assessment rate for a particular segment of an employer's workforce, will have the affect of increasing the rates for the remaining segment of the original class, thereby offsetting any particular benefit of the transfer from one class to another class.

Another matter, as it relates to classes, which the Committee considered, is the practice of establishing deposit account classes.

Some problems associated with the deposit account system, of which we are aware, are as follows: 1) in some circumstances where significant claims are made against an employer and where the deposit account is not large enough to cover off the initial costs of the claims, the Board pays such costs out of the accident fund (the fund established out of collected assessments from the other 5 classes), and in such circumstances the employer eventually makes up the difference upon being billed by the Board. In the interim the assessment group underwrites the costs associated with the claims; 2) in one situation, a deposit account employer, there is no up-front deposit and therefore all initial costs associated with a claim(s) comes from the Collective's accident fund and is subsequently re-imbursed following a billing from the Board for all actual costs. In the interim the assessment group underwrites the costs associated with these claims; 3) certain deposit account groupings have increased in size, due to the addition of particular worker groups to the deposit account employer, even though these additional workers are not direct employees of the employer and 4) the administration fee of 12.5% does not meet the actual costs to the Board.

Because the system, as it exists, does not provide for universal assessment of employers, it significantly detracts from the original concept of collective liability.

RECOMMENDATION P-79

A) THAT ONE (1) ADDITIONAL CLASS BE CREATED, ENTITLED "SALES AND SERVICE" AND WHICH SHOULD ENCOMPASS THOSE SUB-CLASSES 312, 313, 314, 315, 316, 317, 502 AND 506 AS PRESENTLY ESTABLISHED (SEE APPENDIX "I").

B) THAT CLASS 3 - "MANUFACTURE AND SALE" BE ENTITLED "MANUFACTURE AND FARMING"; AND, THAT CLASS 5 - "TRANSPORTATION AND SERVICES" BE ENTITLED "TRANSPORTATION AND FISHING" (SEE APPENDIX "I").

C) THAT THE PRACTICE OF DEPOSIT ACCOUNT FINANCING BE REDUCED IN ITS' APPLICATION AND *ONLY* APPLY TO THE PROVINCIAL GOVERNMENT (CLASS 6) AND THE CANADIAN GOVERNMENT (CLASS 8) AND APPLY *ONLY* TO THE DIRECT CIVIL SERVICE.

D) THAT CLASSES 7 (CNR AND MARINE ATLANTIC) AND 9 (NORTHUMBERLAND FERRIES LTD.), THE INSTRUCTIONAL SCHOOL BOARD EMPLOYEES, THE FACULTY OF U.P.E.I. AND ANY OTHER NON CIVIL SERVICE EMPLOYEES BE ASSESSED AS PER THE PRACTICE WHICH PRESENTLY EXISTS FOR CLASSES 1 THROUGH 5.

E) THAT THE ADMINISTRATION FEE BE REVIEWED AND SET AT A RATE THAT RE-IMBURSES THE BOARD THEIR ACTUAL COSTS.

F) THAT ALL DEPOSIT ACCOUNT EMPLOYERS SHALL PROVIDE A DEPOSIT OF SUFFICIENT FUNDS THAT WILL MEET THE INITIAL COSTS ASSOCIATED WITH THE CLAIMS EXPERIENCE OF THE EMPLOYER FROM YEAR TO YEAR.

STAFF TRAINING

Representatives of a number of organizations who appeared before the Committee made recommendations regarding appropriate staff training on a regular and continuous basis:

> "Present staff should be trained in reporting techniques and interview processes."
>
> "Staff members who relate directly to workers (or survivors) seeking compensation be provided with the opportunity to acquire such skills as are necessary in effective interviewing and career counselling (education)."
>
> "The level of staffing at the Board should probably be increased and continuing training efforts should be given a top priority."

One individual who appeared before our Committee suggested that a large number of complaints, regarding the Workers' Compensation Board, are received annually by the Human Rights Commission.

> "If you would review the annual reports of the Human Rights Commission you will find that each year contains a notation that the two areas of complaints which were most numerous, but fell outside the jurisdiction of the Human Rights Commission, were those relating to civil legal action and workers' compensation. The Commission received more than *two dozen complaints* each year concerning what the complainants believed was unfair treatment by the Workers' Compensation Board."

This individual indicated to the committee that the Human Rights Commission was confronted with some 200 complaints over a nine year period.

The nature of these complaints were categorized as follows:

- Diagnosis of individual doctors were ignored by the Board or not fully accepted. Doctors individually complained on occasion;
- Policies and practices were not consistently applied;
- Suggest there was a failure to refer individuals to specialists in a timely fashion;

- A failure by Board personnel to accept the reality of the injured workers pain;
- A failure to understand and accept psychological distress;
- Board personnel acted too quickly and with little feeling, to dismiss the matter;

Suggested remedies as proposed by the individual were:

- A comprehensive and co-operative approach to retraining staff in specific and critical areas, e.g. human relations;
- Special training for counsellors, especially in area of vocational re-training of injured workers; and
- Training of staff in interviewing techniques.

A number of individuals, injured workers on claims, who appeared before the Committee directed a number of complaints at Board personnel with regard to the manner in which such personnel handled their case:

> "One of the main problems is their (Board personnel) attitude towards claimants - as if we are out to rip off the system."
>
> "I heard I was to be put on pension and I was told that I could appeal that decision. I appealed. I waited four weeks without any acknowlegement of my appeal. Went in and met with (Board personnel). It was as if they never heard of my problem."
>
> "Like myself I am sure many (other presenters) have agonized over their presentations and are nervous and apprehensive for a variety of reasons. The main one I am sure is their past experiences with Workers' Compensation Board and their almighty power to do as they see fit with peoples lives based on their mandate or lack there-of, while giving very little or no consideration to what happens when they cut off regular benefits..."
>
> "So after two or three months you find out there is a rehab program. You talk to the re-hab officer, he tells you to find lighter or different work. When that doesn't work after six months or two years, you ask for physical assessment to be done which has to be approved by the Board. This also takes time, so they give you a few dollars to keep you quiet. Finally, you get your assessment. It is found out that you have some limitations in your arm or leg, hand or whatever may be affected, but little or no consideration is given to other body functions; i.e. your mental state and any other physical problems you may have developed."
>
> "So you say to hell with Workers' Compensation Board and its bureaucratic jungle of red tape and people who won't or can't help you. You go to Manpower, find a special needs counsellor hoping they will find some place or program from which you can start to rebuild some part of life for your family and yourself."

The Committee has been advised by Board personnel that there has **not** been a planned program for staff training over the years and most training has been done on an 'ad hoc' basis.

We hold a great concern with regard to this matter of staff training and we are prepared to recommend that the Board should immediately develop a plan that will provide necessary and appropriate training on the required skills of the various aspects of the system and especially as they relate to human relations and vocational re-habilitation.

RECOMMENDATION P-80

(A) THAT THE BOARD IMMEDIATELY DEVELOP A PLAN FOR THE ONGOING TRAINING OF BOARD PERSONNEL IN ALL FACETS OF ITS OPERATION AND PROVIDING SPECIAL ATTENTION TO THE AREAS OF:

i) HUMAN RELATIONS TRAINING;

ii) INTERVIEWING TECHNIQUES;

iii) COUNSELLING TECHNIQUES;

iv) ON-GOING TRAINING AND EDUCATION IN AREAS OF SPECIFIC SKILLS AND KNOWLEDGE OF INDIVIDUAL JOBS AND POSITIONS.

(B) THAT THE BOARD SERIOUSLY CONSIDER INCREASING THE NUMBER OF COUNSELLORS FOR THE REHABILITATION DIVISION BY HIRING SKILLED AND TRAINED INDIVIDUALS FOR THESE CRITICALLY IMPORTANT POSITIONS.

(C) A NUMBER OF ORGANIZATIONS AND INDIVIDUALS RECOMMENDED THAT THE BOARD HIRE A QUALIFIED MEDICAL OFFICER TO ADMINISTER, REVIEW AND INSURE PROPER PROGRESS IN THE MEDICAL MANAGEMENT OF INJURED WORKERS, AN INDIVIDUAL, A PROFESSIONAL, WHO IS QUALIFIED IN OCCUPATIONAL MEDICINE.

THE BOARD HIRED A QUALIFIED PROFESSIONAL TO FILL THIS ROLE AND FOR THE FIRST TIME, THE BOARD HAS A FULL TIME, QUALIFIED DOCTOR ON STAFF.

THIS COMMITTEE STANDS WHOLEHEARTEDLY IN AGREEMENT WITH THIS ACTION AND COMMENDS THE BOARD FOR ITS DECISION IN THIS REGARD.

BOARD PERSONNEL EVALUATIONS

At this juncture in our report we feel the need to comment upon the forthrightness and the honesty of the Board Personnel, who appeared before the Committee and of those who acted as advisors to the Committee.

The Committee was impressed by the candor which was expressed by each of these people as they responded to the questions and enquiries of Committee members.

As our review continued, we became aware of a particular sense of tenseness, of strained relations, within the confines of Board personnel and we were concerned to determine the depth of this perceived morale problem and its cause or causes.

In one area of our scrutiny, we noticed a particularly rapid growth in the number of personnel on staff, e.g. on June 13, 1988 there were a total of 14 people on staff; in November of 1989 the total number of staff had increased to 24, a 71% increase in a year and one-half; and by May of 1990 this number had increased to 26 people. We feel that such rapid growth has a tendency to create problems as they relate to; availability of office space (which is at a premium), lack of knowledge of the job duties, a lack of training time and the number of supervisors to provide such training on the job, a sense of not knowing to whom one is responsible, personality problems which tend to blossom when matters are askew, and the list goes on.

We do feel that our recommendations with regard to reorganization, hiring, and training will, in time, take care of these concerns. In the meantime it is necessary for each one to recognize these problems and to cope with them as best one can, in recognition and anticipation of pending changes.

The Committee, as well, has deep concern as regards the Position Classification Descriptions (job descriptions) of Board personnel which were provided to us by the Board.

We are concerned that these descriptions are poorly written, in that they do not accurately reflect the actual job duties, responsiblities, supervisory roles, subordinate roles and required qualifications and skills necessary to perform effectively in the system.

Job Descriptions, we believe, should be written objectively, keeping in mind the job itself and the requirements as demanded by the job duties and responsibilities.

Upon reviewing the existing job descriptions we discovered that, in certain respects, there is an obvious overlap in roles, duties and responsibilities as written into these descriptions, over the years. That, in certain respects, it appears that credit for responsibility in specific areas of involvement is written into a particular job description(s), while another, or other, positions actually hold greater factual responsibility to the particular work involvement.

We note, as well, that in far too many cases, these job descriptions are not written on the prescribed forms; are incomplete; do not have the required authorizing signature; and, that we were not provided job descriptions for all twenty-six staff members, if such descriptions do exist.

Another real problem created for individual staff is where the immediate supervisor role, as highlighted in the description, is divided between two people. No person can effectively and efficiently serve two (or more) masters, without becoming embroiled in controversy and conflict.

Another area of our concern regards staff evaluations (staff assessments). We have been informed that it is not the practice of the Board to perform regular, on-going and consistent performance evaluations of the Board staff.

The Committee considers this to be a serious oversight and contributory to some of these problems associated with low morale; of creating a particular uncertainty in individual's minds, with regard to wondering whether their work effort is appreciated or not and, if not, where any particular weaknesses exist in their work output. When weaknesses do exist and when they are not identified to the individual, supervisors do a disservice to them, as they are not provided the opportunity to improve themselves and therefore they continue on, oblivious of the supervisors' discontent with their work. Such situations tend to fester and build to the point where an individual may actually be dismissed, never having been given the opportunity to improve.

RECOMMENDATION P-81

A) THAT, IN CONCERT WITH THE CIVIL SERVICE COMMISSION, THE BOARD RE-WRITE ALL POSITION CLASSIFICATION DESCRIPTIONS IN CONFORMITY WITH THE NORMAL STANDARDS OF THE CIVIL SERVICE COMMISSION AND KEEPING IN MIND OUR COMMENTS SET OUT ELSEWHERE HEREIN.

B) THAT THE BOARD ESTABLISH A PROGRAM TO PERFORM REGULAR, ONGOING AND CONSISTENT JOB EVALUATIONS OF ALL STAFF AS FOLLOWS:

i) THAT THE BOARD DEVELOP A JOB EVALUATION FORM THAT IS APPROPRIATE AND FITTING TO THE SYSTEM;

ii) THAT THE BOARD PERFORM JOB EVALUATIONS ON ALL PROBATIONARY STAFF AT THREE MONTHS, FIVE MONTHS, EIGHT MONTHS AND TWELVE MONTH INTERVALS.

iii) THAT THE BOARD PERFORM JOB EVALUATIONS ON ALL PERMANENT STAFF ANNUALLY, ON THE ANNIVERSARY DATE OF THEIR HIRE.

iv) THAT JOB EVALUATIONS BE THOROUGHLY PERFORMED AND THE APPROPRIATE AND NECESSARY TIME BE ALLOTTED TO THIS CRITICAL FUNCTION BY SUPERVISORS AT ALL LEVELS.

PRE-EXISTING CONDITION

Section 6(7) of the Workers' Compensation Act establishes that all workers are entitled to the full protection of the Act without any discrimination based on their physical condition prior to the accident/injury.

During the public hearing segment of our review, we received some comment and recommendation with regard to this subject from both employer representatives and employee representatives, which we provide here in capsule form:

> "Pre-existing conditions, the Board should apply the Act and make proportional awards."
>
> "Workers are complaining that pre-existing conditions are being used as a way of reducing compensation or limiting the period of compensation."
>
> "The wording seems to ensure that a pre-existing physical condition will not interfere with the right of a worker to receive compensation for an injury. Yet, we are led to believe that this is not always the case."

As can be garnered from such comment there is varying opinion with regard to how pre-existing conditions should impact - or not impact - compensation to an injured worker in such circumstances.

In his report, the Honourable Mr. Justice Roach addressed this very issue:

> "All workmen are entitled to the full protection of the Act without any discrimination based on their physical condition. One or two illustrations will show why this must be so.
>
> Two workmen are struck on the head by a falling object. One suffers a fracture of the skull, the other does not. The one who was injured was found to have a thin skull. Obviously he should not be penalized on that account.
>
> The workman with the abnormally sensitive skin is incapacitated by hot water and soda used to wash crockery. The Court of Appeal in England in the case of Dotzaner v. Strand Palace Hotel Ltd. (1910) 3 Burroughs Workmen's Compensation Cases, page 387, held that was an accident and the workman should not be penalized because he had tender skin.
>
> The result is no different where the workman is suffering from a pre-existing disease. If the injury aggravates the disease to the point where the workman is incapacitated he is none the less entitled to be fully compensated. In Lloyd v. Sugg & Co. (1900) I.K.B. 481, the court of Appeal in England held that a workman who suffered an injury to his forearm which was aggravated by a pre-existing gouty condition, was none the less entitled to compensation and that the pre-existing gouty condition was immaterial in determining the amount of the award.
>
> To insure that section 2(1) shall be given its proper application I recommend that the following be added as subsection 5 of section 2:..."

It is interesting to note here, that the very wording proposed by Mr. Justice Roach for the Ontario Act, now appears as Section 6(7) of the P.E.I. legislation.

At page 87 of the *Manitoba Report*, May, 1987, we find the following comment with regard to this matter of pre-existing conditions:

> "Workers bring to their employers all of their strengths and talents to get the job done; as well, they bring to their employment all of their weaknesses. **One of the first general**

rules in workers' compensation is that the employer accepts the worker as he/she is, as should the compensation system. Thus, if an internal weakness of the worker results in a greater disability than might have been expected; or indeed, an injury where one might not have been expected, the condition is still compensable. **Once accepted as having a compensable condition, workers have the right to expect the compensation system to return them to their preinjury condition, or if unable to do so, to compensate them for the loss."**

And at Page 88 we find the following:

"You will find, if you review the discussion paper on pre-existing conditions, in the Appendix to this report, two distinctive categories of pre-existing conditions: static conditions and the deteriorating conditions. Static **pre-existing conditions involve some inherent limitation, weakness or vulnerability which renders the effects of an industrial accident more severe than might have been expected. Deteriorating pre-existing conditions have already become, or are on the verge of becoming, actively disabling.**

The former type, i.e. static conditions, are usually easier to adjudicate. Although there was a condition, the worker may not have known about it, and it did not effect the employment of the worker in any way. The usual handling of such claims should be to accept full responsibility. Deteriorating pre-existing conditions may either fully recover to pre-injury state, at which time there is no further compensation board responsibility, or result in permanent aggravation. This latter category can be among the more difficult to adjudicate.

These two distinctive categories referenced above are found at Page 228 of the *Manitoba Report* and we provide an overview of that description here:

A) "STATIC" PRE-EXISTING CONDITION

This is where the worker has some inherent limitation, weakness or vulnerability, which renders the effects of an industrial accident more severe in his/her particular case or gives rise to unforeseen or unusual complications in the healing process or simply combines with some otherwise innocuous occupational factor to produce a disability. The crucial feature of a static pre-existing condition is that, prior to the industrial accident, it has no disabling effect in an ongoing or active sense.

By way of example, as Ison states in Workers' Compensation in Canada,

> (the worker) may have had a natural deformity or a weakness that made him vulnerable to injury, or a latent disease, or a degenerative condition the progress of which was so slow that, in the ordinary course of things, it would have had no disabling effect until after retirement.

B) "DETERIORATING" PRE-EXISTING CONDITION

This is where the pre-existing condition already has, or is on the verge of having, an actively disabling effect prior to the occurrence of the industrial accident. Deteriorating pre-existing conditions combine with industrial injuries in one of two distinct factual ways:

> 1) **NO PERMANENT AGGRAVATION:** where the industrial injury does not worsen or aggravate the deteriorating pre-existing condition at all, so that any permanent residual disability remaining after the effects of the industrial injury have healed can be medically attributed solely to the pre-existing condition.
>
> 2) **PERMANENT AGGRAVATION:** where the industrial injury does worsen or aggravate the deteriorating pre-existing condition on a permanent basis. Aggravation (or enhancement) can be constituted not only by an actual worsening of the physical symptoms of the pre-existing condition but also by a premature inducement of the otherwise standard symptoms themselves.

Bearing these three distinct fact situations in mind assists in conceptually differentiating between the various legal and compensatory consequences which flow from the interaction of industrial injuries and pre-existing conditions.

It goes without saying that it is one thing to have nice, clear-cut categories for conceptual and analytical purposes, and quite another to adjudicate factually within which category a given, individual claim will fit. Medical and legal (or statutory) conclusions as to cause-and-effect may be reached by quite different criteria and are not necessarily identical. Legal adjudicators of compensation claims must have regard not only to "facts" as doctors may see them, but must weigh those facts within a framework of legal presumptions and standards of proof.

So while this paper will examine the statutory provisions and stated policies of the various provincial Workers' Compensation Boards, there is no way to tell from these whether the policies are, in practice, being applied correctly. While an erroneous policy will of necessity produce erroneous results, the corollory does not necessarily hold true.

III. PRE-EXISTING CONDITIONS AND WORKERS' COMPENSATION; GENERAL INTRODUCTION

Statutory provisions which deal specifically with the problem of pre-existing conditions are relatively recent additions to provincial Workers' Compensation Acts. In the absence of a specific provision, common law concepts govern.

The seminal Canadian case dealing with pre-existing conditions is Hewitson v. Robin Hood Mills Ltd., a 1923 decision of the Saskatchewan Court of Appeal. Hewitson, a returned soldier, had a static pre-existing condition which predisposed him to suffering back injuries. During the course of his employment, he suffered a permanent back injury when lifting a gangway preparatory to loading a railway car with flour.

The employer argued, firstly, that the predisposition to injury prevented this case from being an "accident" within the meaning of the statute because the injury would not have occurred but for the pre-existing condition. The incident itself was not inherently injurious; an ordinary worker who was not predisposed to injury would have suffered none.

Relying on the highest British court authority dealing with the point, the Saskatchewan Court of Appeal quickly squelched this argument. The employment need not be the sole cause or reason for the injury; it is sufficient if it be a contributing cause.

(To digress briefly, it is interesting to note that the employer's argument is logical, but it is a logic bound to the concept of fault. Using the terminology of the common law governing personal injuries, the employer is really arguing that, although there may be causation in fact, there is no causation in law. Because not even some of the injury was reasonably foreseeable, the Thin Skull Rule could not operate here. But once the concept of fault is removed as a compensation criteria, the objective foreseeability by the wrongdoer of the likelihood of injury becomes irrelevant and the focus of attention becomes, quite rightly, one of pure causation in fact.)

The next issue which arose was whether the monetary compensation to which Hewitson was entitled should be reduced (or apportioned) to take into account the contribution of the static pre-existing condition. The Saskatchewan Court of Appeal decided that, in the absence of statutory provisions on this issue, the compensation must be assessed "according to the principles applicable in ordinary accidents for damages for personal injury." In other words, the ordinary principle of the Thin Skull Rule applies and the worker is entitled to full compensation.

Thus, unless the governing statute provides otherwise, workers' compensation schemes will be responsible for compensating the full extent of industrial injuries according to common law principles, wherein a static pre-existing condition or an aggravated deteriorating pre-existing condition is involved. And, just as at common law, where the industrial accident does not aggravate or worsen a deteriorating pre-existing condition, there would be no recovery for the extended disability since there is no relationship of factual causation.

The trend today is for provincial workers' compensation statutes not to be silent on this point, but to have what is termed "proportionate entitlement" sections. Although wording varies between jurisdictions, the effect of these provisions appear to be to codify the common law principles within the statute. If the statutes and the Board policies which interpret them are correctly applied, the compensatory results should be roughly the same for the different categories of pre-existing conditions as the results obtainable under common law principles and the Thin Skull Rule.

However, problems arise both in understanding and applying this concept of proportionate entitlement;

> Occasionally the Boards mistakenly interpret this mandate to totally deny compensation when they feel that the disability claimed is far greater than would normally be expected from the type of accident suffered. In effect, the Board may try to say that the pre-existing condition which caused some disability before an accident, is now causing all the disability following the accident...[The mistake is to] confuse a pre-existing condition which should at most...[reduce] compensation with a pre-existing condition that may have caused all the subsequent permanent disability.

This issue of "pre-existing conditions", in the minds of employers and workers, is a matter of much controversy and the Committee is convinced of the need for a policy statement from the Board to clearly enunciate their practice with regard to claims that involve a pre-existing condition.

It is clear by the Act, we believe, that a pre-existing condition shall not have any negative bearing on the claim of any worker in his/her application for compensation except where the pre-existing condition is due to an earlier compensable injury.

RECOMMENDATION P-82

A) WE WOULD RECOMMEND THAT THE BOARD DEVELOP A POLICY STATEMENT WITH REGARD TO PRE-EXISTING CONDITIONS WHICH IS CONSISTENT AND COMPATABLE WITH SECTION 6(7) OF THE ACT.

B) SUCH POLICY SHOULD CONTAIN A STATEMENT OF PRINCIPLE, e.g. "SECTION 6(7) OF THE ACT PROVIDES FOR PAYMENT OF COMPENSATION IN RESPECT OF PRE-EXISTING OR UNDERLYING CONDITIONS THAT ARE RELATED TO AN INJURY SUFFERED IN A COMPENSABLE ACCIDENT."

C) CONTAIN A STATEMENT OF PRINCIPLE WITH REGARD TO THE OBLIGATION OF THE WORKERS' COMPENSATION SYSTEM TO RETURN THE INJURED WORKER TO HIS/HER PRE-INJURY CONDITION; OR, OTHERWISE, TO PROVIDE FAIR COMPENSATION FOR THE REDUCED HEALTH AND/OR DIMINISHED FINANCIAL STATUS OF THE INJURED WORKER.

D) CONTAIN A STATEMENT CONCERNING COVERAGE, e.g. "THIS POLICY APPLIES IN ALL CASES WHERE BENEFITS ARE PAYABLE AND WHERE THERE IS A RELATIONSHIP BETWEEN A PRE-EXISTING OR UNDERLYING CONDITION AND THE INJURY ARISING FROM THE ACCIDENT AND WHERE AN INCREASED DEGREE OF RESIDUAL DISABILITY OCCURS OVER THAT USUALLY FOUND IN SUCH CASES OWING TO THE PRE-EXISTING OR UNDERLYING CONDITION."

E) SHOULD PROVIDE THAT A CLAIMANT WHO HAS A STATIC PRE-EXISTING CONDITION SHOULD NOT LOSE ENTITLEMENT TO COMPENSATION OR HAVE HIS/HER BENEFITS REDUCED, NOR RECEIVE BENEFITS FOR A SHORTER DURATION OF TIME, THAN THOSE CLAIMANTS OF SIMILAR CLAIM WHO ARE WITHOUT SUCH PRE-EXISTING CONDITION.

F) SHOULD PROVIDE THAT IN THE ADJUDICATION OF OCCUPATIONAL DISEASE CLAIMS THAT ANY PRE-EXISTING OR UNDERLYING CONDITION WILL NOT BE USED AS REASONS TO TERMINATE OR REDUCE BENEFITS.

G) SHOULD PROVIDE THAT WHERE A DETERIORATING PREEXISTING OR UNDERLYING CONDITION EXISTS THAT COMPENSATION SHALL COVER TEMPORARY AGGRAVATION, PERMANENT AGGRAVATION, AND ENHANCEMENT OF THE CONDITION CAUSED BY A WORK INJURY. [NOTE:

THE MEDICAL ASSESSMENT NECESSARY IN SUCH CASES SHOULD BE PROVIDED BY APPROPRIATE SPECIALISTS WHO ARE NOT EMPLOYEES OF THE BOARD.]

H) THE POLICY SHOULD ADDRESS SUCH OTHER MATTERS AS MAY BE NECESSARY TO ENLIGHTEN INJURED WORKERS AND EMPLOYERS ALIKE WITH REGARD TO THE PRACTICES OF THE BOARD UNDER THESE CIRCUMSTANCES, e.g. ALLERGIES, MEDICAL AID, PENSION CALCULATIONS, COMPENSATION CALCULATIONS, ETC.

BENEFIT OF THE DOUBT

Section 17 of the Act sets out that on any application for compensation an applicant is entitled to the "benefit of the doubt" which means that it is not necessary for the applicant to adduce conclusive proof of his/her right to the compensation applied for. The Board is entitled to draw from all reasonable inferences in favour of the applicant.

In essence then, the Act requires an 'enquiry process' in determining the validity of any claim and therefore there is no burden of proof imposed upon any claimant, nor upon his or her employer. However, the burden of proof resides solely with the Board itself. The process of determining fact is an inquiry process *NOT* an adversarial process.

We have come to learn that there is a perception among claimants that, despite Section 17, they are required to provide evidence and proof of the legitimacy of their claim and such has put them to the very difficult task of acquiring such evidence. For example, one presenter put it this way:

> "We have already been subject to being required to disclose details of all aspects of our personal lives as well as those of other family members, which obviously contributes to a sense of loss of dignity and self esteem, especially to persons who all their lives have been totally self reliant."
>
> "To have the onus of proving the causes of these symptoms resting on the claimant in order to obtain necessary financial assistance and at the same time dealing with all the other pressures exerted by that illness seems totally unacceptable. It is certainly my opinion that in the absence of proof to the contrary, such assistance should be more readily accessible."
>
> "Claimants should not be made to appear in any way, shape or form, as persons out to defraud the system or that it is somehow their fault that they have suddenly become non-contributing members of society. Even being given "the benefit of the doubt" is a rather uncomfortable position, as even though compensation may be forthcoming, the claimant is made to feel as though he is somehow not entitled to this assistance. Lack of evidence to the contrary should be sufficient in these situations."

Ison, in "Workers' Compensation in Canada", 2nd Edition, concludes that there is no national consensus on the meaning to the phrase "the benefit of the doubt"; and, he concludes that in legislation, such as found here in Section 17, there is no standard of proof clearly prescribed.

The *Manitoba Report* holds an excellent description and commentary on this area of interest, comencing at Page 208:

> ### I. THE LEGAL CONCEPT OF PRESUMPTION
>
> Presumptions are, essentially, devices of the law of evidence. Their purpose is to dispense with the necessity of formal proof of certain items, or at least to facilitate the proof thereof. On certain occasions, a presumption will dictate the legal consequence which the decision-maker **must** apply when certain facts are proven.
>
> Since presumptions are evidentiary devices, they are often viewed by lay people in a pejorative way as being mere "technicalities", having nothing to do with the real merits of their cases. In one sense this is true, since presumptions may be imposed on certain fact situations in order to produce results that otherwise would rarely occur and this understandably appears arbitrary. But the fact that this may appear to be so does not mean that presumptions may be disregarded or weakened by the decision-maker. Presumptions are admirably suited to the promotion of specific, wider social policies and usually it is for this purpose that legislatures insert them in statutes. And a legislature, of course, may be as arbitrary as it wishes, subject only to the protections afforded by the Charter.
>
> As technical, evidentiary devices, the functioning of presumptions can only be understood in terms of its relationship to broader concepts of the law of evidence such as the onus or burden of proof...
>
> #### B. TYPES OF PRESUMPTIONS
>
> The broadest distinction between types of presumptions is that between presumptions of law and presumptions of fact. What is the difference?
>
> > Presumptions of law are a consequence 'annexed by law to particular facts'. A presumption of fact is 'an inference which the mind naturally and logically draws from given facts, irrespective of their legal effect'.
>
> A presumption of law has the effect of shifting the legal burden of proof onto the person who does not ordinarily bear it. The importance of this shift is that the defendant then becomes positively legally obliged to disprove the presumed fact or consequence. Silence will be held against the defendant and s/he will lose the case. This shifting of the legal burden of proof is what is meant by a "reverse onus".
>
> A presumption of fact does not shift the legal burden of proof. It shifts only the evidentiary burden of proof, leaving the legal burden still with the plaintiff. Since the evidentiary burden usually shifts as a practical matter anyway, one may well ask

what distinguishes a presumption of fact. Presumptions of fact usually arise in situations where any plaintiff's evidence would appear overwhelming by the very nature of the evidence itself. So, for example, if a person opens a can of beans and discovers a dead rat in it, the evidence of negligence on the manufacturer's part appears pretty incontrovertible, since surely there could be no possible reasonable explanation accounting for the dead rat's presence. So, presumption of fact describes those situations where "the facts are such that a certain inference should, but need not, be logically drawn".

There is one other basic distinction between types of presumptions. Some presumptions are conclusive and others are rebuttable.

Conclusive presumptions are final and absolute; no evidence to the contrary will even be heard by the decision-maker. Such conclusive presumptions are also called irrebuttable presumptions. By definition, a conclusive presumption causes no shift in either the legal or evidentiary burden since such a shift would be meaningless. Because of the potential for harshness in their operation, conclusive presumptions are rare at common law and are always statutory in nature.

Rebuttable presumptions, of course, are those whose effects may be dispelled by evidence to the contrary. The presence of a rebuttable presumption does not mean the decision-maker has a discretion whether to apply it or not, but rather, the presumption's effects can be avoided only if the opposing evidence disproves the presumption on (generally) the balance of probabilities.

II PRESUMPTIONS COMMON TO WORKERS' COMPENSATION LEGISLATION

Presumptions abound in workers' compensation legislation; the great majority are very specific in nature and relate to clearly defined situations. These will be categorized generally and briefly described at the end of the paper, since the content of such presumptions or even their presence tend to vary widely between jurisdictions. They often reflect local conditions and specific provincial policy rather than broad general principles of workers' compensation.

There are, however, two common presumptions and one common rule of procedure which do represent broad general principles of the Canadian idea of workers' compensation and these shall be explored in more detail. These "broad presumptions" tend to apply to all claims and so are worded more vaguely than the "specialized presumptions".

A. BROAD PRESUMPTIONS

1. "OUT OF/IN COURSE OF EMPLOYMENT"

All provincial workers' compensation acts have a provision creating a general presumption to aid in the categorization of injuries/accidents as both arising out of and in the course of employment.

Eight of the provincial sections are similar enough to be considered together for comparative purposes, while only two provinces (Quebec and Saskatchewan) have sections noticeably different in wording.

(a) THE "STANDARD" PROVISION

New Brunswick's provision gives the standard format:

> s.7(2)When the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and when the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

The Newfoundland statute uses the term "injury" instead of "accident", but "injury" is defined in the same way as other jurisdictions use "accident" so the difference in wording is not one of substance. Also, the British Columbia act uses the phrase "In cases where the injury is caused by accident, where the accident arose..." etc. but again the difference is one of form only.

The only other major variation in wording is that the Manitoba act uses the word "proven" instead of "shown", as in "unless the contrary is proven". It is submitted that this merely clarifies the position that prevails under all the acts, vis. that there is not a lesser standard of proof required to rebut the presumption than that which is used in adjudicating any matter under the act. Everything must be proved/rebutted on the "balance of probabilities."

Therefore, these eight provinces (British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland all basically provide for an expressly rebuttable, mutual presumption concerning the two requirements that would otherwise have to be individually and positively proven in each and every claim in order for it to be compensated - namely, that the accident/injury both arose in the course of employment (usually a time and place factor) **and** arose out of the employment itself (usually the factor causing the actual injury).

That these two requirements must both be proven is axiomatic; indeed, most provinces state right in the definition of "accident" or "injury" that it must both arise out of the employment and occur during the course of the employment in order to be an "accident" or injury" under the Act in the first place.

This presumption section can only be understood, it is submitted, in terms of this threshold definition. The proposition will be advanced that it modifies the absolute nature of the proof required to satisfy the definition of "accident" and thus is a time-saving device. In "obvious" cases falling within the definition, it allows the adjudicator to draw certain inferences automatically without (as would otherwise be the case) having to require the leading of formal positive evidence on that point.

The second benefit of this section is that it makes clear that there must be positive proof **against**, rather than **for**, the proposition that an accident arose out of and in the course of employment, thus establishing a starting point or premise which works to the claimant's favour. This does not mean, however, that (given the fact) the presumption may not be very easy to rebut.

It also serves a crucial function in "borderline" cases where there may or may not be evidence sufficient to rebut the presumption. Remember that the general rule when dealing with the civil standard of proof on the balance of probabilities is that, if the evidence is evenly balanced, the "benefit of the doubt" goes to the person from whom damages are sought - not to the person who claims the damages. *The practical effect of this presumption is to reverse this common law situation so that the claimant will have the benefit of the doubt, when all else is equal...*

3. "BENEFIT OF THE DOUBT" SECTIONS

This is the "rule of procedure" referred to in the introduction to this part of the paper; although it has been categorized under the discussion of "Broad Presumptions" it is not, in fact, a presumption in any sense of the word. However, the effect of this rule of procedure is similar to one effect of the broad presumptions we have seen thus far and so is raised now.

It has been shown how presumptions relate to the standard of proof in compensation cases and how one effect is to give claimants the "benefit of the doubt" where the evidence otherwise is evenly balanced. This reverses the common law situation where the person from whom payment is sought receives the benefit of the doubt (so to speak) in a similar situation.

Where a presumption does not operate, however, this effect obviously does not occur. To remedy this, and to give the claimant the benefit of the doubt on all issues where evidence is otherwise evenly balanced, half the provincial jurisdictions have enacted "benefit of the doubt" sections as a general rule of procedure.

These provisions come in two basic formats. One format makes it clear that what is being dealt with is the situation where the evidence is evenly balanced. The B.C. legislation provides in s.99 that:

> 99. The board is not bound to follow legal precedent. Its decision shall be given according to the merits and justice of the case and, where there is doubt on an issue and the disputed possibilities are evenly balanced, the issue shall be resolved in accordance with that possibility which is favourable to the worker.

The Ontario provision is similarly explicit:

> s.3(4) in determining any claim under this Act, the decision shall be made in accordance with the real merits and justice of the case and where it is not practicable to determine an issue because the evidence for or against the issue is approximately equal in weight, the issue shall be resolved in favour of the claimant.

> The other format is much more vaguely worded but its effect is exactly the same. The P.E.I. provision cited here is similar to the ones contained in the Newfoundland and Nova Scotia legislation.
>
> > 17. Notwithstanding anything in this Act, on any application for compensation an applicant is entitled to the benefit of the doubt, which means that it is not be [sic] necessary for the applicant to adduce conclusive proof of his right to the compensation applied for, but that the board is entitled to draw and shall draw from all reasonable inferences in favour of the applicant.
>
> Nothing in such provisions means that claimants should always receive compensation, or that a claimant's weak evidence should always prevail over strong evidence to the contrary. It applies only in one narrow situation - where the evidence is inconclusive one way or the other (evenly balanced). If the evidence is not evenly balanced, consideration of the section does not even arise.
>
> It is submitted that such "benefit of the doubt" provisions, although modest in range of use, are properly in the liberal and remedial spirit of workers' compensation legislation and perhaps should be present in the Manitoba Act as well.

The Committee recognizes that the Act speaks for itself in such matters and that policy is intended as an aid to its' interpretation and to explain the practice of the Board in applying the Section of the Act to any real situation.

We therefore feel that it is necessary for the Board to develop a policy, which clearly establishes the practice of the Board, in applying benefit of the doubt in cases.

RECOMMENDATION P-83

A) THAT THE BOARD DEVELOP A CLEARLY ESTABLISHED PRACTICE, IN THE APPLICATION OF THE BENEFIT OF THE DOUBT TO CASES.

B) THAT SUCH POLICY CLEARLY ESTABLISH THE TYPES OF PRESUMPTIONS THAT ARE PRESENT IN SUCH CASES, e.g. PRESUMPTIONS OF LAW, PRESUMPTIONS OF FACT.

C) THAT SUCH POLICY SHOULD REFERENCE ANY PRESUMPTIVE SCHEDULES, e.g. INDUSTRIAL DISEASE SCHEDULES.

D) THAT SUCH POLICY SHOULD REFERENCE ANY SPECIFIC PRESUMPTIONS, e.g. WHERE THE ACT STATES THAT A CERTAIN RESULT, FACT, OR STATUS EXISTS, A PRESUMPTION IS CREATED (SECTION 32).

E) THAT THE BOARD DIRECT IT'S ATTENTION TO PAGE 217 OF THE MANITOBA REPORT FOR GUIDANCE IN THE AREA OF "GUIDANCE TO ADJUDICATING STAFF" WHICH PROVIDES SOLID ADVICE FOR DEVELOPING GUIDELINES FOR SUCH POLICY.

F) OTHER GUIDELINES WHICH MAY BE CONSIDERED IN THE POLICY ARE: THE TIME WHEN MEDICAL AID WAS FIRST SOUGHT; THE TIME WHEN THE MATTER WAS FIRST REPORTED; AND WHEN THE CLAIMANT FIRST EXPERIENCED PAIN OR DISCOMFORT.

G) FINALLY WE RECOMMEND THAT AS A PRINCIPLE, THE POLICY SHOULD CLEARLY STATE THAT WHERE AN OPINION IS PRESENTED WHICH TENDS TO NEGATE ANY CLAIM, IT SHALL BE NECESSARY THAT THE OPINION BE SUPPORTED BY SUBSTANTIAL FACT, OTHERWISE SECTION 17 ALLOWS FOR THE BENEFIT OF THE DOUBT TO BE GIVEN IN THE CLAIMANTS FAVOUR.

MEAT CHART

The Committee received considerable comment with regard to the "meat chart" method of determining the degree of disablement and subsequently the amount of compensation.

What follows is an overview of some of that comment:

"'Meat chart' method of determining compensation must be eliminated and each claim must be dealt with and considered on its own merit for wage loss replacement."

"The 'meat chart' approach has been utilized. It is our view that this is totally inappropriate and is inconsistent with present society's needs."

"Permanent partial disability pensions, where the worker is not totally disabled, should be abolished, and be replaced with the "dual award" system."

"I would also like to know why, in some cases, people who have suffered far less disabling injuries than I did, are awarded larger percentages and Permanent Partial Disability Pensions?"

Earlier in our report, we clearly established the fact that we are not disposed to recommending the "dual award" system.

What is this "meat chart" which people make reference to? It is a rating schedule which determines the degree of disability resulting from an accident. Also, schedules are used to determine whether a claim is of a total disability or of partial disability in nature.

Many of the complaints which we have received, with regard to disability percentages, which the Board has awarded in the past, appear to stem from the fact that the rating schedule which is used is not understood by the claimants; and, the claimants are ignorant to how the Board arrived at the rating in the first place.

Our research indicates that there are a number of rating schedules which are in effect across the country.

The *Manitoba Report* recommends (at Page 162) that Manitoba adopt the American Medical Association Guides for rating the impairment.

Advice which we have received is that these AMA guides have their own problems, in that they tend to provide lower impairment ratings and need to be adjusted from 85%, which is their maximum rate, to 100% in some specific cases.

The Board informs us that they presently use an amalgam off the Newfoundland and Saskatchewan rating schedules.

We are satisfied that this present situation of using this rating schedule is appropriate and satisfactory, however, we do believe that whatever rating schedule is being used by the Board, the Board is obliged to publish it and make it a known fact.

RECOMMENDATION P-84

A) THAT THE BOARD ADOPT, VIA OUR PROPOSED POLICY PROCESS HEREIN, A RATING SCHEDULE, WHICH SHALL CONTINUE TO BE THE RATING SCHEDULE UNTIL AMENDED OR RESCINDED VIA THE POLICY PROCESS, FROM TIME TO TIME.

B) THAT THE RATING SCHEDULE BE PUBLISHED AND BE MADE AVAILABLE TO THE PARTNERS BY CONTAINMENT IN THE MEDICAL MANUAL PROPOSED EARLIER HEREIN.

BUDGET PROCESS

During our review of the administrative policies, practices and processes of the Board, we were advised that the Board does not develop a budget year over year.

The Board advisors indicated, and rightly so, that it would be an impossible task to budget around the exigencies of accident claims, associated medical costs, benefit costs and rehabilitation costs. We concur that such would be next to impossible.

However, there is an area of considerable expenditure which, we believe, the Board should be compelled to budget for and this is in the areas of staff salaries and benefits, capital expenditures and staff training.

RECOMMENDATION P-85

A) THAT THE BOARD COMMENCE THE PRACTICE OF DEVELOPING AND APPROVING AN ADMINISTRATIVE BUDGET ON AN ANNUAL BASIS.

B) THAT EACH OF THE DIVISIONS HAVE INPUT INTO THIS BUDGET PROCESS.

C) THAT THE BUDGET INCLUDE STAFF SALARIES, STAFF BENEFITS (e.g. PENSION, U.I.C., WORKERS' COMPENSATION, BLUE CROSS, ETC.). BOARD MEMBERS HONORARIUMS, APPEAL BOARD HONORARIUMS, CAPITAL EXPENDITURES (e.g. OFFICE FURNISHINGS, COMPUTERS, OFFICE SUPPLIES, ETC.), RENT/LEASE COSTS, INSURANCE, ETC.

D) THAT THE BOARD OF GOVERNORS SHALL HAVE THE FINAL APPROVAL OF THE BUDGET.

E) THAT DIVISIONS AND THE ADMINISTRATION KEEP EXPENDITURES TO THESE BUDGETED LEVELS EXCEPT FOR EMERGENCY SITUATIONS.

STANDARD OF PROOF

The Committee is sensitive to this whole area of enquiry process versus adversary process and we are concerned that if the adversary process has intruded into the compensation process, that every effort be made to bring the process back to the general principle of the *Enquiry Model*. There should be no burden of proof on anyone except the Board.

We are prepared to recommend that the Board adopt a policy statement to this effect.

RECOMMENDATION P-86

A) THAT THE BOARD DEVELOP AND PUBLISH A POLICY STATEMENT TO THE AFFECT THAT THERE SHALL BE NO REQUIREMENT TO FORCE THE WORKER TO PROVE THAT HIS/HER CLAIM IS A VALID CLAIM, NOR TO FORCE THE EMPLOYER TO PROVE THAT THE WORKERS' CLAIM IS NOT A VALID CLAIM. THAT THIS IS THE SOLE FUNCTION OF THE WORKERS' COMPENSATION BOARD.

B) THAT THE BOARD ADOPT AS PART OF THIS POLICY THAT ALL CLAIMS ISSUES SHALL BE DETERMINED IN ACCORDANCE WITH THE BALANCE OF PROBABILITIES IN EACH CASE. CONCLUSIONS REACHED IN ALL MATTERS SHALL BE DETERMINED FROM THE FACTS OF THE CASE WHICH INVOLVES A SEARCH FOR THE BEST AVAILABLE HYPOTHESIS.

C) THAT THE BOARD ADOPT AND PUBLISH ANY "STANDARD OF PROOF", PERMISSIBLE BY THE ACT, WHICH IT INTENDS TO STAND ON IN CLAIMS CASES.

REVIEW OF DECISIONS

Section 50 of the Act deals with this whole matter of re-opening and review of claims. Subsection (1) of Section 50 sets out the criteria under which any claim, decision or adjustment may be re-opened for review.

We are advised that a claim may be requested to be reopened by a claimant and, otherwise, may only be re-opened upon the initiative of the Board where there is cause.

Research and advice received would indicate that a "re-opener" differs from an appeal in that there is no question as to the validity of the decision. Essentially a re-opener is deemed necessary where there has been a deterioration in the condition of the claimant from the time when the original decision was made; where there is a recurrance of the original injury after having returned to employment; where there has been a change in the number, circumstances or condition of dependents; or where new evidence, regarding the original claim may have come to the fore.

Reviews will result in one of three decisions being taken; 1) no change to benefits, or 2) an improvement to benefits, or 3) a reduction in benefits.

We do feel that it is necessary that the Board develop and adopt policy in this regard and publish it as a guide to claimants.

RECOMMENDATION P-87

A) THAT THE BOARD DEVELOP AND ADOPT A POLICY WITH REGARD TO THE RE-OPENING OF DECISIONS AND SUCH POLICY SHOULD COVER THE FOLLOWING CONCERNS:

i) THE MEANING OF RE-OPENING A CLAIM;

ii) THE GROUNDS FOR CONSIDERING A RE-OPENING OF ANY CLAIM, DECISION OR ADJUSTMENT;

iii) THE EFFECT OF A DETERIORATING CONDITION;

iv) THE EFFECT OF A RECURRANCE OF THE ORIGINAL INJURY;

v) THE EFFECT OF NEW WAGE RATES AT THE TIME OF THE RE-OPENER;

vi) THE EFFECT OF CHANGES IN CIRCUMSTANCES, e.g. DEPENDENTS;

vii) RETRAINING

viii) RETROACTIVITY

ix) POTENTIAL RESULTS OF ANY REVIEW.

DISABILITIES: PERMANENT TOTAL; PERMANENT PARTIAL; TEMPORARY TOTAL; AND, TEMPORARY PARTIAL

The classification of disabilities recognized in the act are described in Sections 42, 43 and 44.

These four classifications recognize that injuries suffered by workers may range between the most severe, i.e. permanent total disability, to the less severe, i.e. temporary partial disability.

A review of the 1988 and 1989 annual reports of the Board reflect that the vast majority of claims fall into the temporary total/partial disability classification.

In 1987, sixty-three percent (62% in 1988) of all claims filed with the Board were closed out by the end of the second week. Eighty-five percent of all claims were closed out by the end of the seventh week in 1987 (83% in 1988) and only three percent of all claims in 1987 (2.6% in 1988) continued beyond one year.

In our minds this record speaks to a fairly efficient and effective compensation system.

Throughout the public hearings segment of our review we were hearing comments and recommendations that were in the main negative towards the system, relative to major time delays in response to treatment and compensation by the Board.

Indeed, such might be the case in a few instances, however, we believe, based on the record, that in the majority of claims the opposite was the case.

A problem, we believe, which does exist within the system is the fact that there is not enough specific information relative to claims, benefits, obligations and rights, available to the claimants. The existing booklet "Information for Workers" is deficient in many respects with regard to the information it supplies to workers.

Therefore we are recommending that the Board develop and publish policy with regard to disabilities that is clear and concise in it's detail.

RECOMMENDATION P-88

A) THAT THE BOARD DEVELOP POLICY WITH REGARD TO PAYMENTS FOR DISABILITY.

B) THAT THE POLICY CLEARLY DEFINE THE FOUR MAJOR CLASSIFICATIONS OF DISABILITY COVERED BY THE ACT.

C) THAT THE POLICY CLEARLY DEFINE THE FOLLOWING PRINCIPLES:

i) WHEN COMPENSATION COMMENCES,

ii) WAGE LOSS BENEFITS,

iii) CALCULATION OF EARNINGS AND WHAT CONSTITUTES EARNINGS,

iv) INDEPENDENT OPERATORS,

v) CALCULATION OF COMPENSATION,

vi) MINIMUM COMPENSATION AND MAXIMUM COMPENSATION,

vii) COMPENSABLE DAYS,

viii) DISFIGUREMENT,

ix) MEDICAL AID,

x) DURATION OF BENEFIT,

xi) DISABILITY RATING SCHEDULES,

xii) ALLOWANCES,

xiii) PENSIONS,

xiv) DEPENDENTS,

xv) LUMP SUM PAYMENTS,

xvi) RECURRENCES,

xvii) REVIEWS,

xviii) APPEALS.

HEARING LOSS

As the result of an amendment to the Act in 1987, hearing loss as a result of work related injury, even though there was no time lost from work, was recognized as being compensable.

Generally there exist three provisions under which compensation for hearing loss may be paid: 1) a traumatic hearing loss resulting from a very loud noise or explosion (or in some cases from welding sparks), 2) a gradual hearing loss resulting from exposure to noise over a prolonged period of time and 3) in British Columbia there is a provision for compensating gradual hearing loss, or non-traumatic hearing loss, arising out of and in the course of employment.

Compensation is provided to workers whose hearing is damaged as a result of their employment and such workers are eligible for permanent partial disability awards proportioned to the extent of the loss.

We believe that it is necessary that the Board should develop and publish a policy relating to hearing loss.

RECOMMENDATION P-89

A) THAT THE BOARD DEVELOP AND PUBLISH A POLICY AND PRACTICE WITH REGARD TO HEARING LOSS, IT'S DETECTION AND THE METHOD OF CALCULATING COMPENSATION, e.g. DEFINE THE TYPES OF HEARING LOSS RECOGNIZED BY THE BOARD, DEFINE THE STANDARDS OF TESTING FOR HEARING LOSS, SET OUT THE METHODS RELIED UPON IN DETERMINING WHETHER OR NOT THE HEARING LOSS IS THE RESULT OF WORK-RELATED NOISE EXPOSURE.

B) THAT TINNITUS CASES BE RECOGNIZED AS BEING COMPENSABLE.

C) THAT WORKERS WHO SUFFER COMPENSABLE HEARING LOSS SHOULD RECEIVE THE SAME BENEFITS AS ACCRUE TO OTHER DISABLED WORKERS.

MEDICAL REMOVAL

There are times when a worker(s) will contract conditions from their work, such as allergies or skin disorders, for example, which will require the worker to be off work and away from the cause of the aggravation so that they may reduce the level of any toxic substance in their system to a safer level.

Sometimes, the worker is unable to continue in the pre-injury job due to the built up sensitivity in his/her system; and, it may be impossible to remove the offending substance from the work place environment to relieve the worker of it's presence.

In cases where the employer does not have available, a job that is away from the harmful environment or where it is impossible to create a safer alternate job position with the employer, removing the worker from such a situation is, in the long run, in the best interests of *all* concerned. The worker benefits because he/she is apart from the offending work situation; the employer benefits by preventing what might evolve into a crippling condition which could result in higher compensation costs in the long run.

However, in such circumstances the affected worker is left in the position of being out of work and unless action is taken to protect the worker, he/she and any dependents are left without financial support.

There is a critical need created whenever any worker is forced to remove himself/herself from the job due to the work related conditions which have created a medical problem for the worker.

RECOMMENDATION P-90

A) THAT THE BOARD DEVELOP AND PUBLISH POLICY AND PRACTICE WITH REGARD TO MEDICAL REMOVAL AND INCORPORATE INTO THAT POLICY AND PRACTICE THE FOLLOWING:

i) DEFINE MEDICAL REMOVAL,

ii) SET OUT INTENT TO FIND SUITABLE ALTERNATE EMPLOYMENT WITH THE PRE-INJURY EMPLOYER.

iii) SET OUT INTENT TO FIND SUITABLE ALTERNATE EMPLOYMENT WITH ANOTHER EMPLOYER, IN SIMILAR EMPLOYMENT,

iv) SET OUT INTENT TO FIND SUITABLE ALTERNATE EMPLOYMENT WITH ANOTHER EMPLOYER IN WORK OF A DIFFERENT NATURE FOR WHICH THE WORKER WOULD QUALIFY,

v) DURATION OF WAGE LOSS REPLACEMENT,

vi) VOCATIONAL REHABILITATION BENEFITS,

vii) RECURRENCE DUE TO SENSITIZED CONDITION,

viii) PERMANENT PARTIAL DISABILITY AWARD IN THE LATENT ALLERGY.

B) THE COMMITTEE WISHES TO EMPHASIZE IT'S CONCERN IN THESE CIRCUMSTANCES AND WE ENCOURAGE THE BOARD TO DO EVERYTHING POSSIBLE AND REASONABLE IN ENSURING A SMOOTH TRANSITION FOR THOSE WORKERS AFFECTED BY SUCH AN INSIDIOUS MEDICAL CONDITION.

SPECIFIC INCIDENT

During the public hearings segment of our review, the Committee received considerable input from presenters related to defining "accident" in the Act in a very narrow and specific manner.

These recommendations came to the fore, we believe, because there exists a perception out there that the Board will accept almost any claim and where there is a suspicion that the claim doesn't necessarily arise from a work related incident.

We are convinced that this is just not the case and we are also convinced that the number of presenters were not appreciative of the insidious nature of disease causing environments; nor, of the impact of health conditions being contracted over a long period of exposure at the work place.

Some of the comments of presenters in this regard were:

> "The definition in the Act of the workplace injury or accident should clearly state that only work related injuries are compensated."
>
> "(We) take the position that any movement to increase the scope of work related injury thus allowing workers to receive benefits for injuries which cannot be proven to be directly work related...unjustifiably add to the cost of compensation and should be resisted."
>
> "The definition of 'accident' and what constitutes a job related injury has been expanding and has created too much leeway in the interpretation of a job related accident."
>
> "Employees who suffer a work-related injury should be provided with compensation and have access to rehabilitation services. The work-related injury should be associated with a specific incident."
>
> "Injury restricted to a work related specific incident."

Our first comment with regard to such recommendations is that the existing definition of accident clearly establishes that the Act recognizes disablement "arising out of and in the course of employment" as a valid claim. That the Act presently, clearly recognizes that only work related injuries are to be compensated.

The reference by presenters to narrowing the definition to specifically recognize *only* those claims where a "work related *specific incident*" exists, is very narrow and thoughtless, with regard to work contracted diseases, work contracted hearing (non-traumatic) loss, contracted repetitive motion injuries and the list goes on. Surely it must be recognized that such injuries can be work related and yet impossible to find a specific incident in time that is solely causative of the injury or disease. Such a definition, we believe would be unfair, unrealistic and unjustifiable.

Ison, in Workers' Compensation in Canada, 2nd Edition, concludes that to deny a claim on the ground that there was no specific event at work is obviously unlawful.

The Board advisors to the Committee assure us that the Board does not require a specific incident, a specific event in time, to validate claims. Although specific incidents, where they do exist are proof of an accident in obvious circumstances, e.g. a fall, explosion, struck by a falling object, etc.

We have some concern in this regard and would recommend that a policy be developed and published which clearly establishes the fact that a specific incident is not necessary to validate a claim.

One claimant who appeared before the Committee raised concern in this regard, due to the particulars described in the "Worker's Report of Accident" form (form No. 6) and the requirement to provide "the date and hour of the accident".

We will be dealing with these forms specifically, later in this report. However, we do concur with the presenter that the form, as presently worded, lends support to this whole question of there being a specific incident required, even though it is a false impression that is left with the individual.

RECOMMENDATION P-91

A) THAT THE BOARD DEVELOP AND PUBLISH A POLICY AND PRACTICE WITH REGARD TO WHAT CONSTITUTES A COMPENSABLE ACCIDENT AND CLEARLY AND CONCISELY ESTABLISH THE FACT THAT A SPECIFIC INCIDENT IS NOT REQUIRED TO VALIDATE A CLAIM.

B) THAT THE POLICY SHOULD INCORPORATE A FEW ILLUSTRATIONS OF ACCIDENTS WHICH HAVE NO SPECIFIC INCIDENT AND ARE INJURIES OR DISEASES WHICH MAY BE CONTRACTED ARISING OUT OF OR IN THE COURSE OF EMPLOYMENT, e.g. HEARING LOSS, REPETITIVE MOTION CLAIMS, DISEASE, ETC.

C) THAT THE POLICY SHOULD INCORPORATE AND ADDRESS THE FOLLOWING ISSUES AS WELL:

i) CONTRIBUTORY NEGLIGENCE,

ii) INTOXICATION,

iii) VIOLATION OF HEALTH AND SAFETY REGULATION OR RULE,

iv) ILLEGAL EMPLOYMENT (CLAIMANT NOT LEGALLY QUALIFIED FOR THE EMPLOYMENT),

v) DEVIATION FROM THE ASSIGNED TASK TO ASSIST OTHER WORKER(S),

vi) WILLFUL VIOLENCE PURPETRATED BY ANOTHER.

(NOTE: TO CLARIFY, NONE OF THE ABOVE ISSUES IS CONSIDERED TO BE A VALID BAR TO A WORKER'S RIGHT TO RECEIVE COMPENSATION WHERE THERE IS A WORK RELATED ACCIDENT.)

FIRST AID

During the course of our review, we received correspondence from St. John Ambulance, P.E.I. Provincial Headquarters, in which that organization raised some concern relating to their apprehension that the Board may be contemplating terminating a relationship between itself and St. John Ambulance which dates back to 1973.

In 1973 the Board struck a relationship with St. John Ambulance whereby the Board would provide to St. John Ambulance a training room (since terminated due to a lack of available space at the Board office), an annual operating grant and per capita support for certain participants in the Workers' Compensation plan on a fee basis.

We are advised by the Board that they have no intention of terminating this relationship with St. John Ambulance and, in addition, they affirm that the program is a positive one and beneficial overall to the Compensation system.

St. John Ambulance provides us with the following statistics and information:

Most companies seek to improve their profits by controlling costs, increasing productivity, or by accelerating the return on investment. Today, more and more Senior Executives recognize that an effective way to improve the company's financial performance is to invest in the health and safety of its employees.

But, injuries continue to plague the canadian workplace. According to Labour Canada estimates, 1,092,862 employees were injured in 1986 - 807 of them fatally, 17,738,192 person-days were lost (more than double the unusually high loss due to strikes and lock-outs) for a total cost of $16 billion. The cost, in terms of human suffering, and negative public relations, is incalculable.

This publication shows how an investment in Safety Oriented First Aid (SOFA) training produces a substantial increase in profit (usually over $10,000 for every $1,000 invested) through the reduction of employee injuries.

For the first time, the following factors have been analyzed and correlated:

- the financial effects of major improvements in first aid training and techniques
- the impact of training on a broad scale
- the relationship between the direct and indirect costs of injuries
- the number of off-the-job injuries related to absence from work
- the effects of first aid training on the trainees' personal safety awareness, on and off the job
- user reaction

For many years it has been apparent that people trained in first aid have fewer, and less severe injuries than untrained people. But to what degree?

To answer this question, a major research project, FACTS (First Aid Community Training for Safety) was launched by St. John Amublance, the Workers' Compensation Board of Ontario and the Industrial Accident Prevention Association in the early 1970's.

Over 5,500 people in Orillia, Ontario, were trained in Safety Oriented First Aid (SOFA) and the results were analyzed by experts from York University. In brief, they

> **"were impressed by the strong relationship between first aid training and reduced industrial accident rates, and by the increase in safety attitudes and information among trainees".**

The statistics showed a drop in the accident rate of 20% to 30% when SOFA supplemented other safety measures.

Another industrial research project - FACTS II - was subsequently launched to test the results of FACTS I. This time 3,600 people were trained in Safety Oriented First Aid in the Guelph/Cambridge area. Three hundred of these trained employees were matched with a test group of 300 non-trained employees. Both groups had similar personal profiles and work experiences.

1. Saturation first aid training reduced the overall rate of accidental injuries by 20%, and significantly decreased the severity of injuries.

2. New industrial safety programmes, incorporating saturation first aid training, achieved a 55% reduction in accidental injuries and a net reduction in severity of over 50%.

3. The FACTS first aid training reinforced driver safety awareness and contributed to a decline of over 26% in motor vehicle accidents.

4. When injured people received first aid treatment immediately following an accident, only 30% required further medical attention and only 24.5% of these were hospitalized. About 70% of the people who did not receive immediate first aid needed further medical attention and 75.5% of these required hospitalization.

FACTS II showed that untrained employees had twice as many accidents as those with first aid training.

As a result, improved St. John Ambulance SOFA courses were approved and underwritten by Workers' Compensation Boards across Canada.

Too many injuries do occur: some through inadequate safety measures, some through carelessness, some caused by weather, and some are almost unavoidable. But when people see the effects of those injuries, they develop a more personal safety awareness - on and off the job.

We are convinced that such an association is positive towards improving accident prevention awareness in the workplace and should continue.

The Board advises us, as well, that they have a similar association with the Red Cross.

RECOMMENDATION P-92

A) THAT THE BOARD CONTINUE IT'S ASSOCIATION WITH ST. JOHN AMBULANCE AND THE RED CROSS; AND, WHERE IT IS FOUND TO BE POSSIBLE AND BENEFICIAL TO IMPROVING WORKPLACE SAFETY AND HEALTH AND SAFETY AWARENESS IN THE WORKPLACE, TO IMPROVE UPON THE PRESENT ARRANGEMENTS WITH THESE REPUTABLE ORGANIZATIONS.

MEDICAL DOCTOR

A number of presenters made strong recommendations to us that the Board should have numbered among it's staff, a full-time medical doctor who is trained in occupational medicine.

During the period of our review, the Board moved to contract the services of a qualified medical doctor.

We concur with this initiative and would recommend that the position be created as a full-time staff position with the Board.

RECOMMENDATION P-93

A) THAT THE POSITION OF MEDICAL DOCTOR TO THE BOARD, OF AN INDIVIDUAL QUALIFIED IN OCCUPATIONAL MEDICINE, BE CREATED AS A FULL-TIME POSITION WITHIN THE STAFF COMPLEMENT OF THE BOARD.

B) THAT THE ROLE OF THE MEDICAL DIRECTOR SHOULD BE:

i) TO PROVIDE ADVICE ON MEDICAL MATTERS IN ASSISTING STAFF IN DECISION MAKING,

ii) THE DOCTOR SHOULD NOT BECOME INVOLVED DIRECTLY IN CLAIMS ADJUDICATION,

iii) THE DOCTOR SHOULD NOT BECOME INVOLVED IN FILE MANAGEMENT,

iv) THE DOCTOR SHOULD BE LIMITED TO DESCRIBING THE MEDICAL CONDITION ONLY,

v) THE DOCTOR SHOULD BE LIMITED IN EXAMINATIONS OF CLAIMANTS STRICTLY FOR THE PURPOSES OF DETERMINING PHYSICAL DISABLEMENT AND DEGREE OF IMPAIRMENT TO BE USED IN SETTING PENSIONS,

vi) THE DOCTOR SHOULD ASSIST IN INTERPRETING MEDICAL REPORTS FOR OTHER STAFF.

C) WE WOULD ENCOURAGE THE BOARD TO REFER TO PAGE 131 OF THE MANITOBA REPORT WITH REGARD TO CONCERNS RELATED TO THE ROLE OF THE MEDICAL DOCTOR AND OTHER PROFFESIONALS.

RECOMMENDATION P-94

THAT THE BOARD DEVELOP AND PUBLISH A BENEFITS MANUAL THAT CLEARLY AND CONCISELY SETS OUT THE BENEFITS AS PROVIDED FOR BY THE LEGISLATION.

RECOMMENDATION P-95

THAT THE BOARD DEVELOP AND PUBLISH MANUALS WHICH PROVIDE TO WORKERS AND EMPLOYERS GENERAL INFORMATION REGARDING WORKERS' COMPENSATION WHICH CLEARLY AND CONCISELY SETS OUT THEIR INDIVIDUAL OBLIGATIONS AND RIGHTS UNDER THE ACT.

FORMS

Presently, there exist a number of forms which the Board relies upon, in gathering important information from employers, injured workers and medical professionals.

We have perused these forms and have determined that, in some instances, forms should be amended or discarded and completely re-drafted in the name of consistency, efficiency, effectiveness or clarity.

Our recommendations in this regard are as follows:

RECOMMENDATION P-96

(A) A NUMBER OF THE FORMS MAKE REFERENCE TO "DOCTOR", "SURGEON", "M.D.", OR "PHYSICIAN", INDIVIDUALLY. IN THE NAME OF CONSISTENCY, THESE FORMS SHOULD BE AMENDED AND SUCH REFERENCES SHOULD BE CHANGED TO READ "DOCTOR" IN ALL CASES.

(B) FORM NUMBER 6, TITLED "WORKER'S REPORT OF ACCIDENT", WE FEEL, SHOULD BE DISCARDED AND A NEW FORM ADOPTED IN THE STYLE OF FORM NUMBER 6 USED BY THE NEW BRUNSWICK WORKERS' COMPENSATION BOARD. THAT FORM IS MORE DETAILED AND SPECIFICALLY REFERENCES "INDUSTRIAL DISEASE", WHICH THE EXISTING P.E.I. FORM FAILS TO RECOGNIZE IN ITS MAKE-UP.

(C) FORM NUMBER 7, TITLED "EMPLOYER'S REPORT OF ACCIDENT", WE FEEL, SHOULD BE DISCARDED AND A NEW FORM ADOPTED IN THE STYLE OF FORM NUMBER 7 USED BY THE NEW BRUNSWICK WORKERS' COMPENSATION BOARD.

(D) FORM NUMBER 8, TITLED "SURGEON'S FIRST REPORT", WE FEEL, SHOULD BE DISCARDED AND A NEW FORM ADOPTED IN THE STYLE OF FORM NUMBER 8 IN USE BY THE NEWFOUNDLAND AND LABRADOR WORKERS' COMPENSATION BOARD. HOWEVER, THE NEW FORM SHOULD BE TITLED "DOCTOR'S FIRST REPORT".

(E) FORM NUMBER 10, TITLED "SURGEON'S PROGRESS REPORT", WE FEEL, SHOULD BE DISCARDED AND A NEW FORM ADOPTED AND TITLED "DOCTOR'S PROGRESS REPORT". THIS FORM SHOULD BE DEVELOPED IN COOPERATION WITH THE MEDICAL SOCIETY OF P.E.I.

(F) THE FORM ENTITLED "EMPLOYER'S PAYROLL STATEMENT", WE FEEL, SHOULD BE AMENDED AS FOLLOWS:

> (i) INSTRUCTION NUMBER 7 SHOULD BE AMENDED TO READ, e.g. "THE EMPLOYER MUST FURNISH A LIST OF NAMES OF PERSONNEL AND THEIR EARNINGS FOR WHOM STATUTORY PAYROLL DEDUCTIONS ARE MADE".
>
> (ii) THE BOARD SHOULD INSERT THE WORDS, "PREVIOUS YEAR'S STATISTICS", IMMEDIATELY FOLLOWING THE RED LETTERED INSTRUCTIONS AND IMMEDIATELY ABOVE THE BLACK LETTERED "TOTAL GROSS EARNINGS OF EMPLOYEES DURING."
>
> (iii) THE BOARD SHOULD INSERT THE WORDS, "CURRENT YEAR'S STATISTICS", IMMEDIATELY FOLLOWING BLOCK NUMBER 6 AND IMMEDIATELY ABOVE BLOCK NUMBER 7.

(G) ALL FORMS SHOULD HAVE A NOTATION NEAR THE BOTTOM TO THE EFFECT THAT "THIS FORM WAS ADOPTED BY DECISION OF THE BOARD ON (DATE)".

CHAPTER THREE

RECOMMENDATIONS

WORKERS' COMPENSATION BOARD

STRUCTURES

CHAPTER THREE

RECOMMENDATIONS ON STRUCTURES

Throughout the earlier parts of this report, we make numerous recommendations with regard to legislative amendments and with regard to policy and practice.

In making such recommendations, we are suggesting that specific changes be made to existing structures within the system.

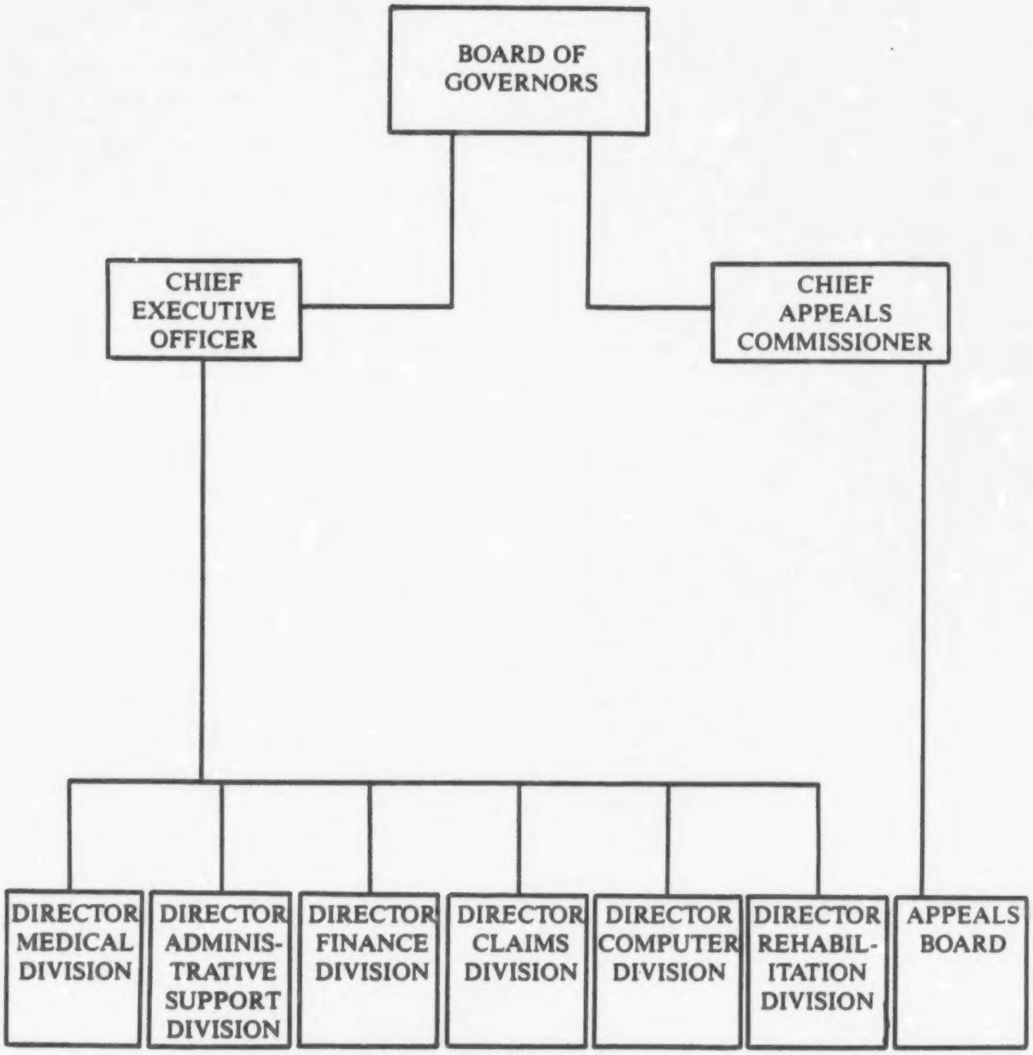
As per it's mandate, the Committee is providing schematic diagrams to clearly illustrate it's intent with regard to these proposed re-structurings. We provide, as well, specific written instruction with each schematic to further enhance our intent.

SCHEMATIC #1

HIERARCHY

WORKERS; COMPENSATION BOARD

RECOMMENDATION S-97


BOARD OF GOVERNORS
CHIEF EXECUTIVE OFFICER
CHIEF APPEALS COMMISSIONER
DIRECTOR MEDICAL DIVISION
DIRECTOR ADMINIS-TRATIVE SUPPORT DIVISION
DIRECTOR FINANCE DIVISION
DIRECTOR CLAIMS DIVISION
DIRECTOR COMPUTER DIVISION
DIRECTOR REHABIL-ITATION DIVISION
APPEALS BOARD

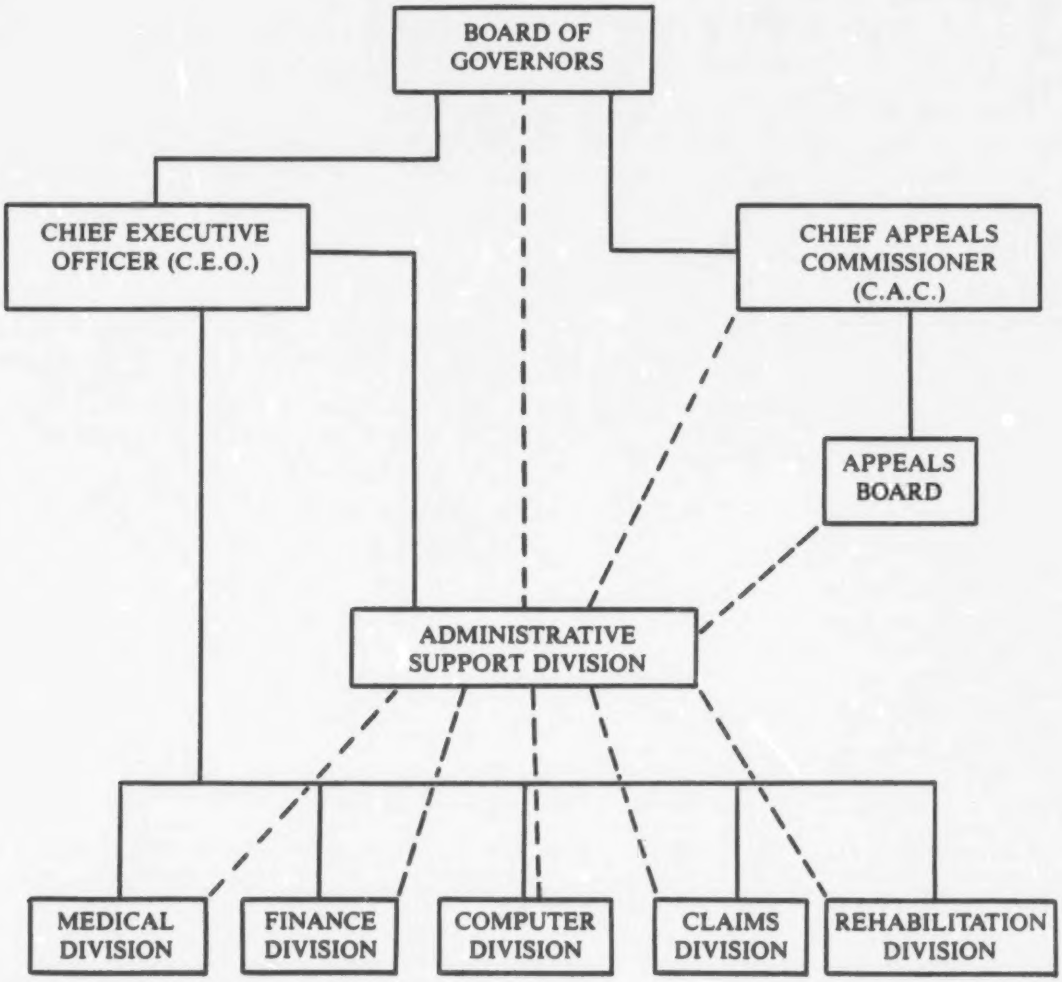
SCHEMATIC #2

OPERATIONAL STRUCTURE

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-98

WORKERS' COMPENSATION BOARD


BOARD OF GOVERNORS
CHIEF EXECUTIVE OFFICER (C.E.O.)
CHIEF APPEALS COMMISSIONER (C.A.C.)
APPEALS BOARD
ADMINISTRATIVE SUPPORT DIVISION
MEDICAL DIVISION
FINANCE DIVISION
COMPUTER DIVISION
CLAIMS DIVISION
REHABILITATION DIVISION

OPERATIONAL STRUCTURE

SCHEMATIC #2

WORKERS' COMPENSATION BOARD

Within the existing structure of the Board there are some fifteen secretaries and clerks, who provide clerical services to the various sections of the compensation system.

As a result of providing their clerical services to more than one section of the system at any given time; and, because there is no central clerical pooling authority, many times these personnel are subservient to the directions of two or more supervisors, with their individual demands on clerical staff time. Such results in extreme stress on the individual and also results in diminished productivity.

We are proposing that a central Division be created which will be supervised by one Director, who will have the responsibility of responding to requests for clerical assistance from individual Divisions and who will assign such work to individuals from within this resource and assure equal distribution of workload among it's personnel; and, be solely responsible for supervision within the Division, responsible only to the Chief Executive Officer.

This Administrative Support Division will be comprised of a qualified Director and the necessary number of secretarial and clerical classifications so as to meet the exigent needs of the compensation system.

We intend that specific Divisions should have sufficient numbers of permanently assigned clerical staff within the individual division, as per it's critical needs and that the Administrative Support Division will provide additional clerical assistance as the exigent need arises; and, also it will provide clerical assistance where no permanently assigned clerical personnel exist within a particular Division or section.

In addition, this Division shall be responsible for the switchboard operations, responding to general telephone calls to the Board, routing incoming calls and taking messages.

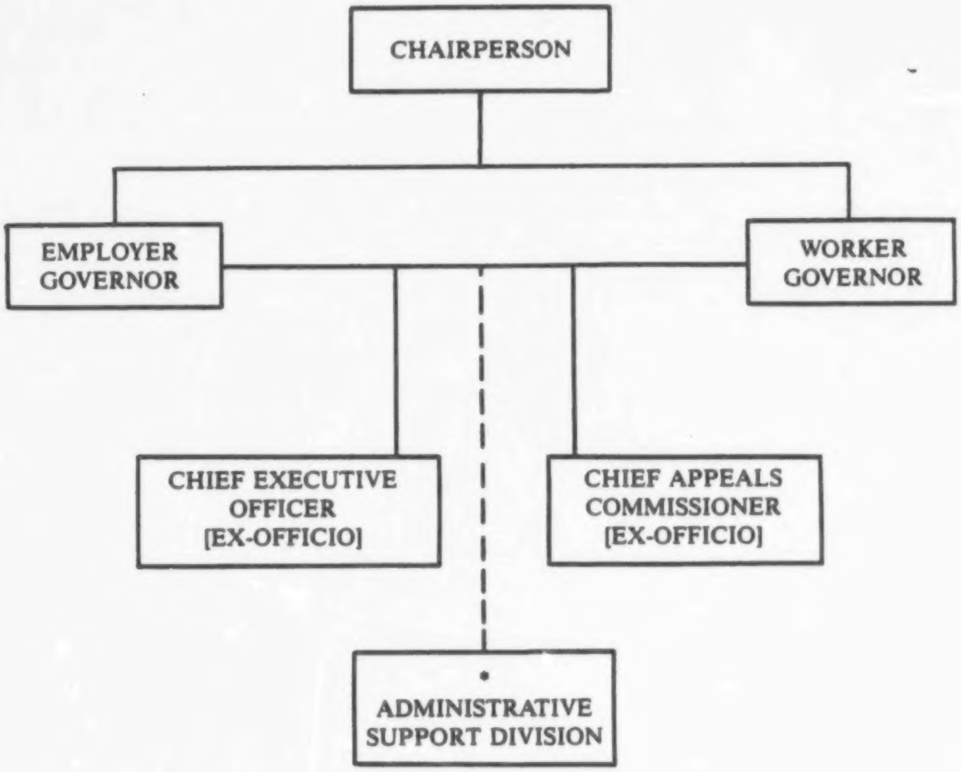
The committee will specifically identify, in this section of it's report, the Divisions, where permanently assigned clerical personnel shall be located.

SCHEMATIC #3

BOARD OF GOVERNORS

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-99


CHAIRPERSON
EMPLOYER GOVERNOR
WORKER GOVERNOR
CHIEF EXECUTIVE OFFICER [EX-OFFICIO]
CHIEF APPEALS COMMISSIONER [EX-OFFICIO]
*
ADMINISTRATIVE SUPPORT DIVISION

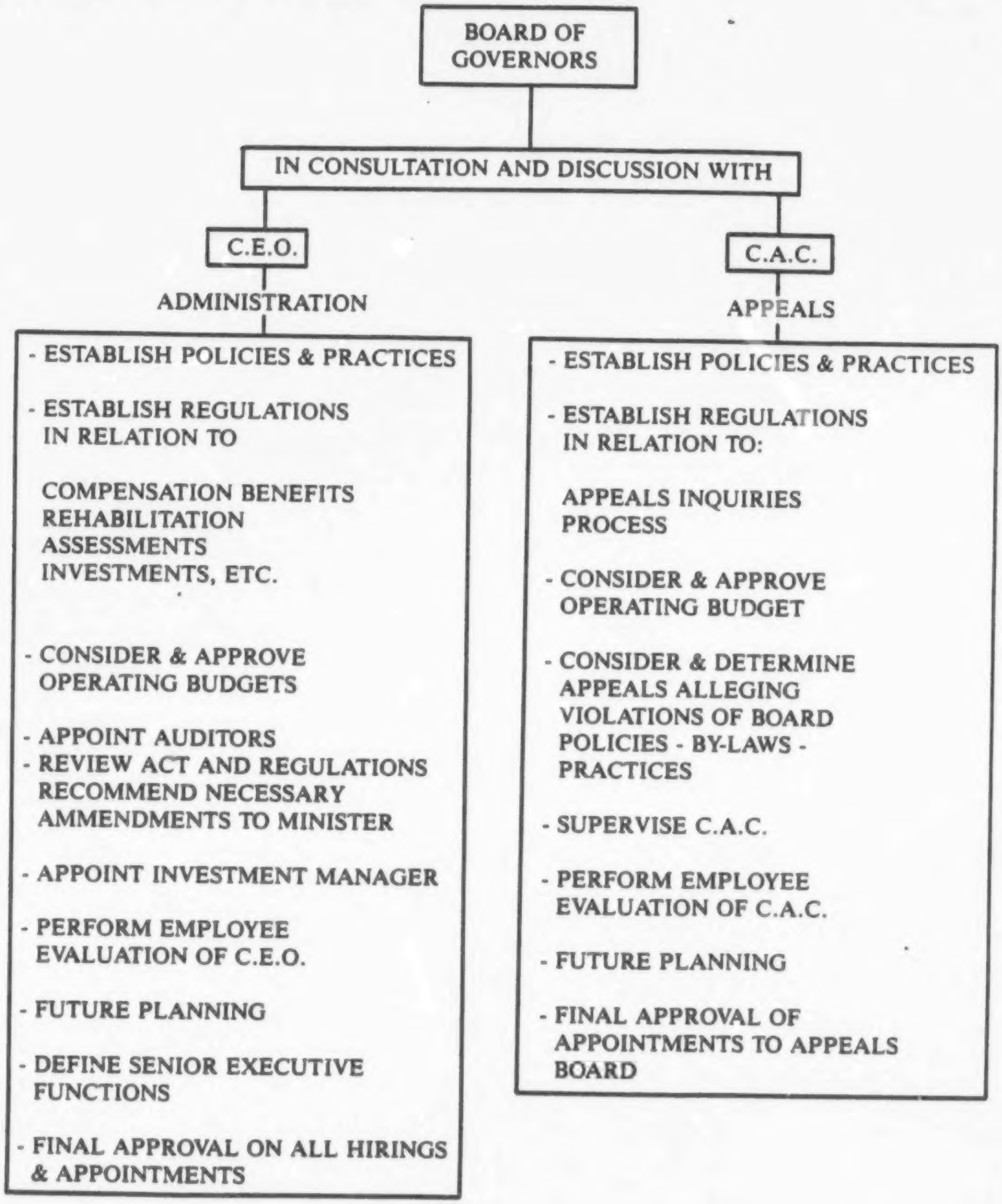
* - THE ADMINISTRATIVE SUPPORT DIVISION SHALL PROVIDE SECRETARIAL SERVICES TO THE BOARD OF GOVERNORS AND THE CHAIRPERSON AS REQUESTED.

SCHEMATIC #4

ADMINISTRATIVE ROLE OF THE BOARD OF GOVERNORS

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-100



BOARD OF GOVERNORS

IN CONSULTATION AND DISCUSSION WITH

C.E.O.

ADMINISTRATION

- ESTABLISH POLICIES & PRACTICES
- ESTABLISH REGULATIONS IN RELATION TO

  COMPENSATION BENEFITS
  REHABILITATION
  ASSESSMENTS
  INVESTMENTS, ETC.
- CONSIDER & APPROVE OPERATING BUDGETS
- APPOINT AUDITORS
- REVIEW ACT AND REGULATIONS RECOMMEND NECESSARY AMMENDMENTS TO MINISTER
- APPOINT INVESTMENT MANAGER
- PERFORM EMPLOYEE EVALUATION OF C.E.O.
- FUTURE PLANNING
- DEFINE SENIOR EXECUTIVE FUNCTIONS
- FINAL APPROVAL ON ALL HIRINGS & APPOINTMENTS

C.A.C.

APPEALS

- ESTABLISH POLICIES & PRACTICES
- ESTABLISH REGULATIONS IN RELATION TO:

  APPEALS INQUIRIES PROCESS
- CONSIDER & APPROVE OPERATING BUDGET
- CONSIDER & DETERMINE APPEALS ALLEGING VIOLATIONS OF BOARD POLICIES - BY-LAWS - PRACTICES
- SUPERVISE C.A.C.
- PERFORM EMPLOYEE EVALUATION OF C.A.C.
- FUTURE PLANNING
- FINAL APPROVAL OF APPOINTMENTS TO APPEALS BOARD

ADMINISTRATIVE ROLE OF THE BOARD OF GOVERNORS

SCHEMATIC #4

WORKERS' COMPENSATION BOARD

With regard to this whole matter of the role of the Board of Governors, we concur wholeheartedly with the findings of the *"Advisory Committee on the Structures of the Workers' Compensation System of British Columbia"*, with it's report, October 31, 1988:

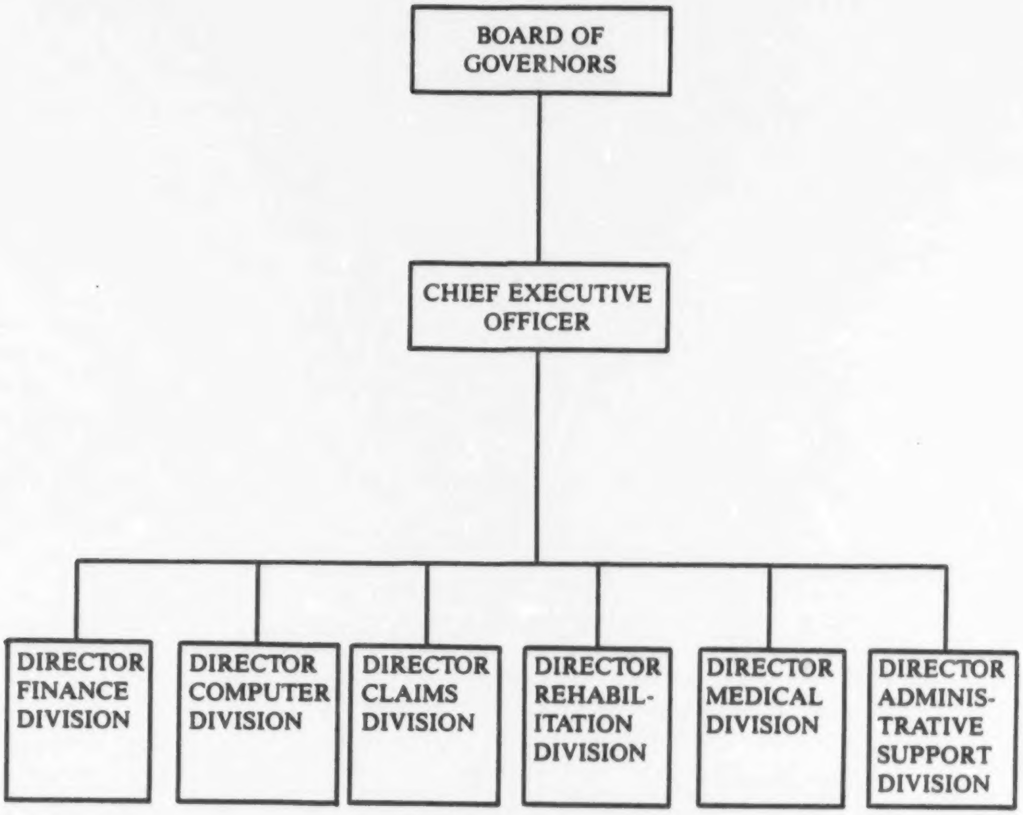
> "It should be observed as well that the idea of a governing board is not new. Such boards exist in other Canadian jurisdictions. It is time to introduce it into British Columbia.
>
> The various existing models, and others, have been considered by the Committee. At the threshold is the selection of an appropriate name. While that may seem unimportant, the choice of name does say something about the role contemplated for the governing body. On the one hand, its members should not be involved in the day-to-day minutiae of the organization. Rather, the daily running of the organization should be left to the responsible officers, administrators and other personnel who will be subject to the usual accountabilities. But nor should the new governing body be merely advisory. It should exercise real control in the definition of senior executive functions; the selection and assessment of the most senior officers; the development of policies and regulations; the approval of operating and capital budgets; the approval of major programs and expenditures; the investment of monies on hand; planning for the future."

SCHEMATIC #5

CHIEF EXECUTIVE OFFICER

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-101


BOARD OF GOVERNORS
CHIEF EXECUTIVE OFFICER
DIRECTOR FINANCE DIVISION
DIRECTOR COMPUTER DIVISION
DIRECTOR CLAIMS DIVISION
DIRECTOR REHABILITATION DIVISION
DIRECTOR MEDICAL DIVISION
DIRECTOR ADMINISTRATIVE SUPPORT DIVISION

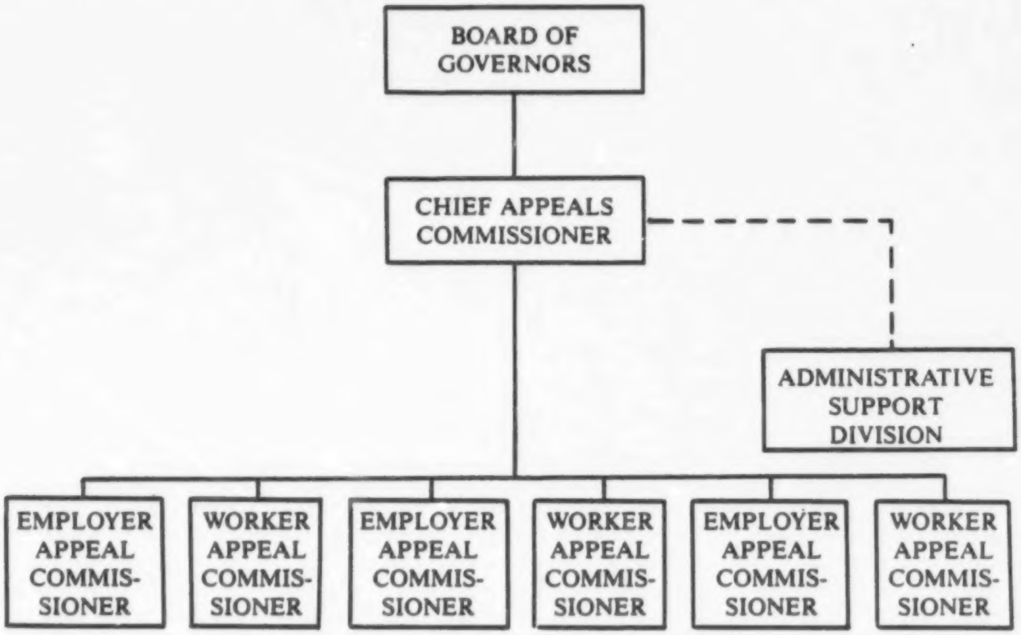
(NOTE: WITH REGARD TO THE SPECIFIC FUNCTIONS OF THE C.E.O. PLEASE REFER TO RECOMMENDATION L-39 HEREIN.)

SCHEMATIC #6

CHIEF APPEALS COMMISSIONER AND APPEALS BOARD

WORKERS' COMPENSATION BOARD

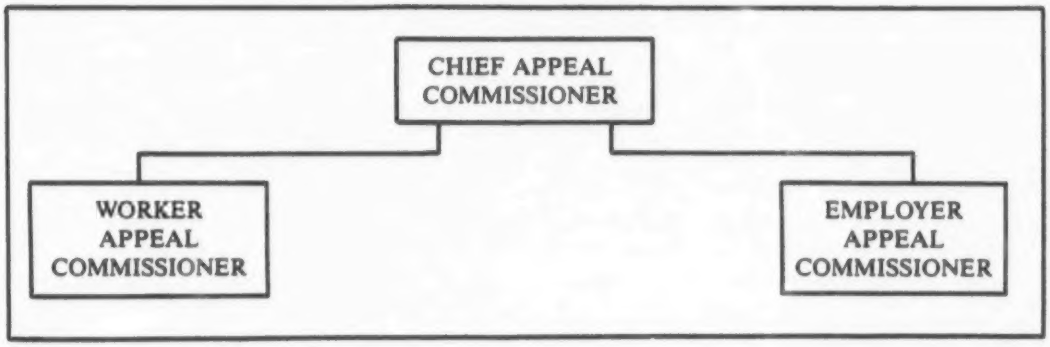
RECOMMENDATION S-102


BOARD OF GOVERNORS
CHIEF APPEALS COMMISSIONER
ADMINISTRATIVE SUPPORT DIVISION
EMPLOYER APPEAL COMMISSIONER
WORKER APPEAL COMMISSIONER
EMPLOYER APPEAL COMMISSIONER
WORKER APPEAL COMMISSIONER
EMPLOYER APPEAL COMMISSIONER
WORKER APPEAL COMMISSIONER

(SEE RECOMMENDATION L-44 HEREIN)

APPEAL PANEL FOR EACH INDIVIDUAL ENQUIRY

APPEAL PANEL

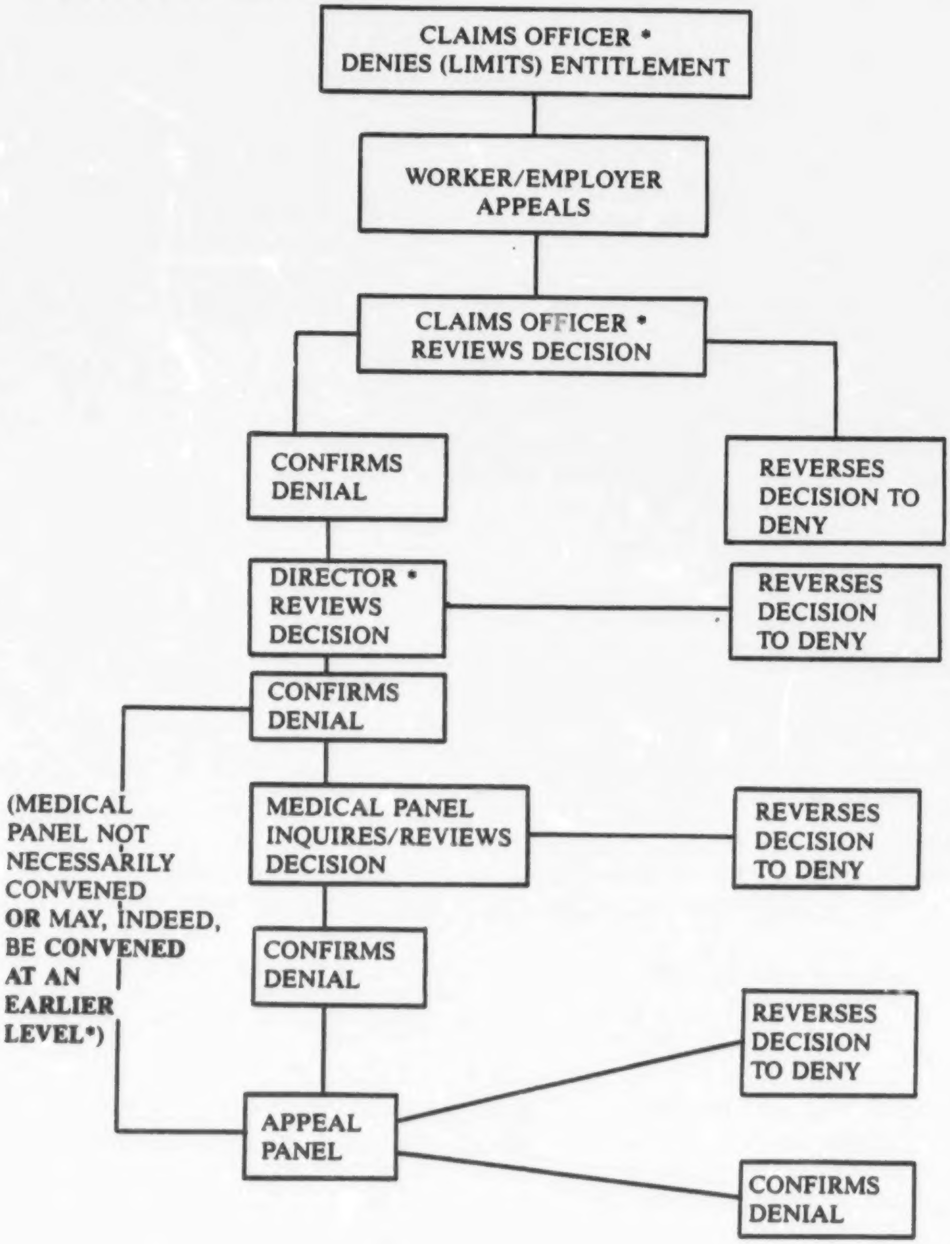

CHIEF APPEAL COMMISSIONER
WORKER APPEAL COMMISSIONER
EMPLOYER APPEAL COMMISSIONER

SCHEMATIC #7

CLAIMS APPEALS

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-103


CLAIMS OFFICER * DENIES (LIMITS) ENTITLEMENT
WORKER/EMPLOYER APPEALS
CLAIMS OFFICER * REVIEWS DECISION
CONFIRMS DENIAL
REVERSES DECISION TO DENY
DIRECTOR * REVIEWS DECISION
REVERSES DECISION TO DENY
CONFIRMS DENIAL
(MEDICAL PANEL NOT NECESSARILY CONVENED OR MAY, INDEED, BE CONVENED AT AN EARLIER LEVEL*)
MEDICAL PANEL INQUIRES/REVIEWS DECISION
REVERSES DECISION TO DENY
CONFIRMS DENIAL
REVERSES DECISION TO DENY
APPEAL PANEL
CONFIRMS DENIAL

CLAIMS APPEALS

SCHEMATIC #7

WORKERS' COMPENSATION BOARD

Due to our great concern that an adversarial system not develop, due to our proposed Appeal Process, we again refer to the comments of the *Manitoba Committee* in this regard and we would encourage all concerned that they cooperate to the fullest extent in ensuring that the "Inquiry Model" be the adopted appeals process of the Prince Edward Island Workers' Compensation Board.

At pages 185, 186 and 187 of the *Manitoba Report*, May 1987:

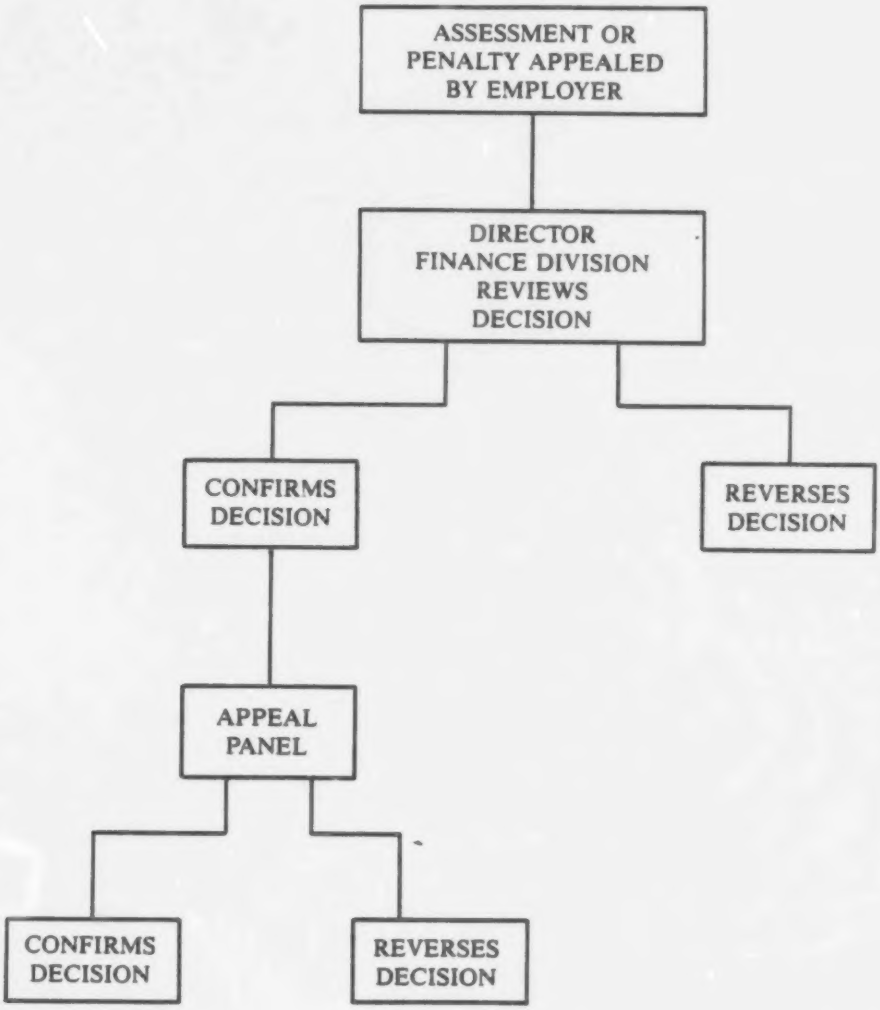
> "There was much debate among our Committee members, as well as by participants at public hearings, on the question of an external appeal body. Other considerations aside, the major concern we have with an external appeal has to do with the move, in Manitoba and in other provinces, toward an adversarial model of workers' compensation, rather than the inquiry model which has been the basic design since the program's inception.
>
> Under the inquiry model of workers' compensation it is the duty and responsibility of the Workers' Compensation Board to gather sufficient evidence on both sides of any issue to make an intelligent and reasonable decision. The compensation system does not leave to, nor should it rely on, expert witnesses brought forward by either employers or workers, in deciding an issue. Rather, the Workers Compensation Board has the mandate and resources to do a thorough job by itself. This does not preclude either an employer or worker providing information which may have been overlooked or not taken into account. Nor does it preclude either the employer or the worker presenting arguments as to legal interpretation. What it does preclude is the establishment of an adversarial system where two sides argue a matter before the Board of Commissioners, with the Board taking a primarily non-participatory role. Such is the system developing in Manitoba."
>
> "It is not the function of the Board to hear two arguments and determine which is more compelling. Rather, it is the function of the Board to bring out all information which is relevant to a case and make a decision based upon fact and law."
>
> ". . . employers are not required (nor should they be) to do the work of the Workers' Compensation Board in determining the legitimacy of a claim."
>
> "If there is material or arguments which the employer feels will be overlooked, we would far rather see the Board of Commissioners hold a separate meeting with the employer, than to have the employer sitting across the table from the worker, presenting arguments. There may be rare disputes of fact, which in the Board's opinion, require having both the worker and the employer jointly present. However, these meetings should be factfinding rather than adjudicative."

SCHEMATIC #8

ASSESSMENT OR PENALTY APPEALS

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-104

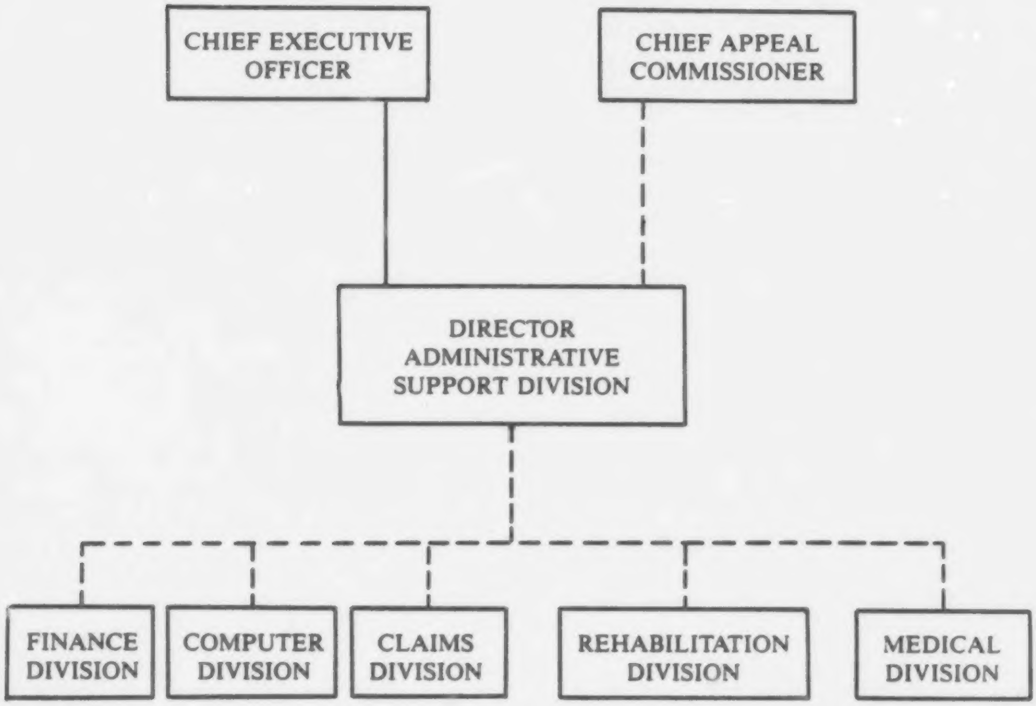

ASSESSMENT OR PENALTY APPEALED BY EMPLOYER
DIRECTOR FINANCE DIVISION REVIEWS DECISION
CONFIRMS DECISION
REVERSES DECISION
APPEAL PANEL
CONFIRMS DECISION
REVERSES DECISION

SCHEMATIC #9

ADMINISTRATIVE SUPPORT DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-105


CHIEF EXECUTIVE OFFICER
CHIEF APPEAL COMMISSIONER
DIRECTOR ADMINISTRATIVE SUPPORT DIVISION
FINANCE DIVISION
COMPUTER DIVISION
CLAIMS DIVISION
REHABILITATION DIVISION
MEDICAL DIVISION

THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION IS RESPONSIBLE TO, AND REPORTS TO THE CHIEF EXECUTIVE OFFICER.

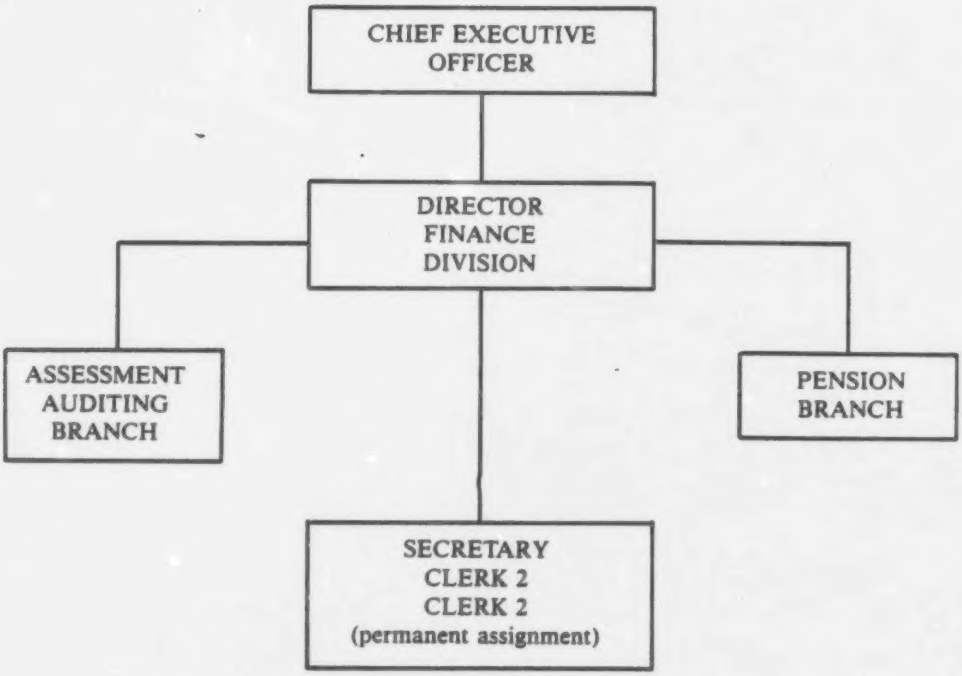
(THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION ASSIGNS SECRETARIAL AND CLERICAL SUPPORT UPON REQUEST OF INDIVIDUAL DIRECTORS - CHIEF APPEAL COMMISSIONER OR CHIEF EXECUTIVE OFFICER OR THE BOARD OF GOVERNORS)

SCHEMATIC #10

FINANCE DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-106


CHIEF EXECUTIVE OFFICER
DIRECTOR FINANCE DIVISION
ASSESSMENT AUDITING BRANCH
PENSION BRANCH
SECRETARY
CLERK 2
CLERK 2
(permanent assignment)

THE DIRECTOR OF THE FINANCE DIVISION IS RESPONSIBLE TO AND REPORTS TO THE CHIEF EXECUTIVE OFFICER.

THE FINANCE DIVISION HAS TWO DISTINCT BRANCHES, i.e. THE ASSESSMENT AND AUDITING BRANCH AND THE PENSION BRANCH.

PERMANENTLY ASSIGNED TO THIS DIVISION ARE ONE SECRETARY AND TWO CLERK 2'S.

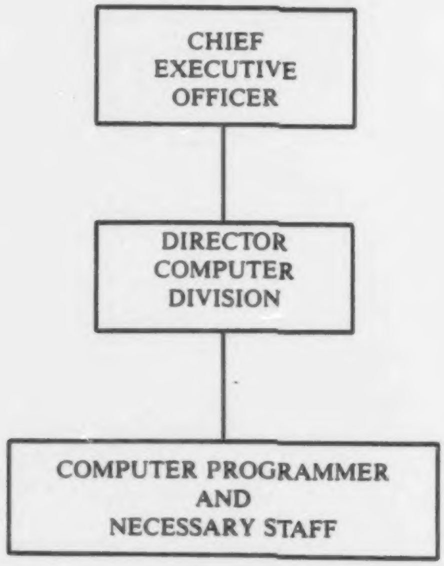
IN TIMES OF EXCESSIVE WORKLOAD, THE DIRECTOR MAY APPROACH THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION FOR ADDITIONAL CLERICAL ASSISTANCE.

SCHEMATIC #11

COMPUTER DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-107


CHIEF EXECUTIVE OFFICER
DIRECTOR COMPUTER DIVISION
COMPUTER PROGRAMMER AND NECESSARY STAFF

THE DIRECTOR OF THE COMPUTER DIVISION IS RESPONSIBLE TO AND REPORTS TO THE CHIEF EXECUTIVE OFFICER.

AT ANY TIME THAT THIS DIVISION NEEDS CLERICAL ASSISTANCE, THE DIRECTOR SHALL REQUEST SUCH SUPPORT FROM THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION.

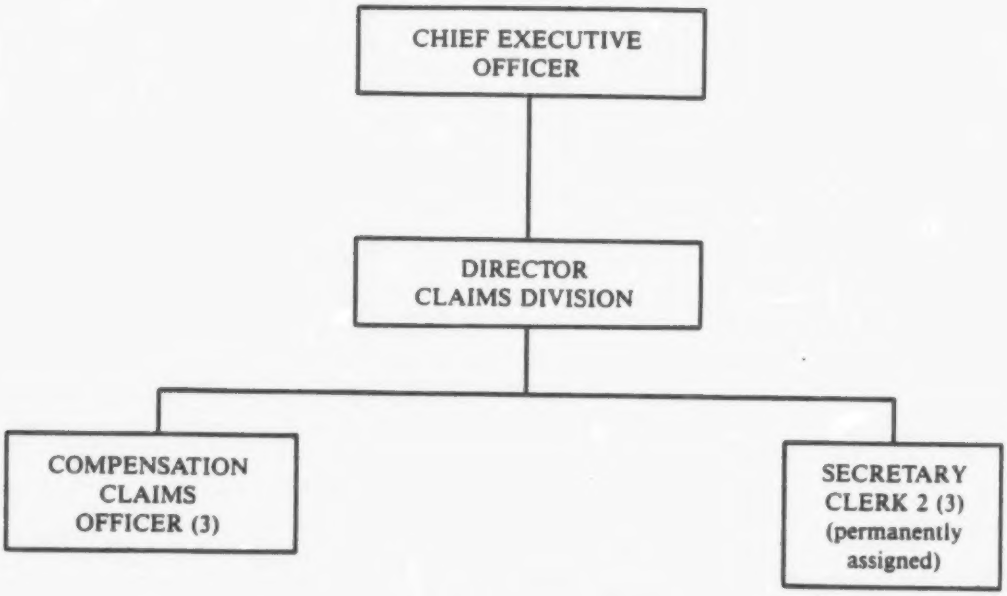
THIS DIVISION SHALL SUPPLY ALL NECESSARY COMPUTER SERVICES TO THE OTHER DIVISIONS, THE APPEALS BOARD AND THE BOARD OF GOVERNORS.

SCHEMATIC #12

CLAIMS DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-108


CHIEF EXECUTIVE OFFICER
DIRECTOR CLAIMS DIVISION
COMPENSATION CLAIMS OFFICER (3)
SECRETARY CLERK 2 (3) (permanently assigned)

THE DIRECTOR OF THE CLAIMS DIVISION IS RESPONSIBLE TO AND REPORTS TO THE CHIEF EXECUTIVE OFFICER.

THIS DIVISION SHALL BE COMPRISED OF THREE CLAIMS OFFICERS, A SECRETARY AND THREE CLERK 2'S WHO SHALL BE PERMANENTLY ASSIGNED TO THE DIVISION.

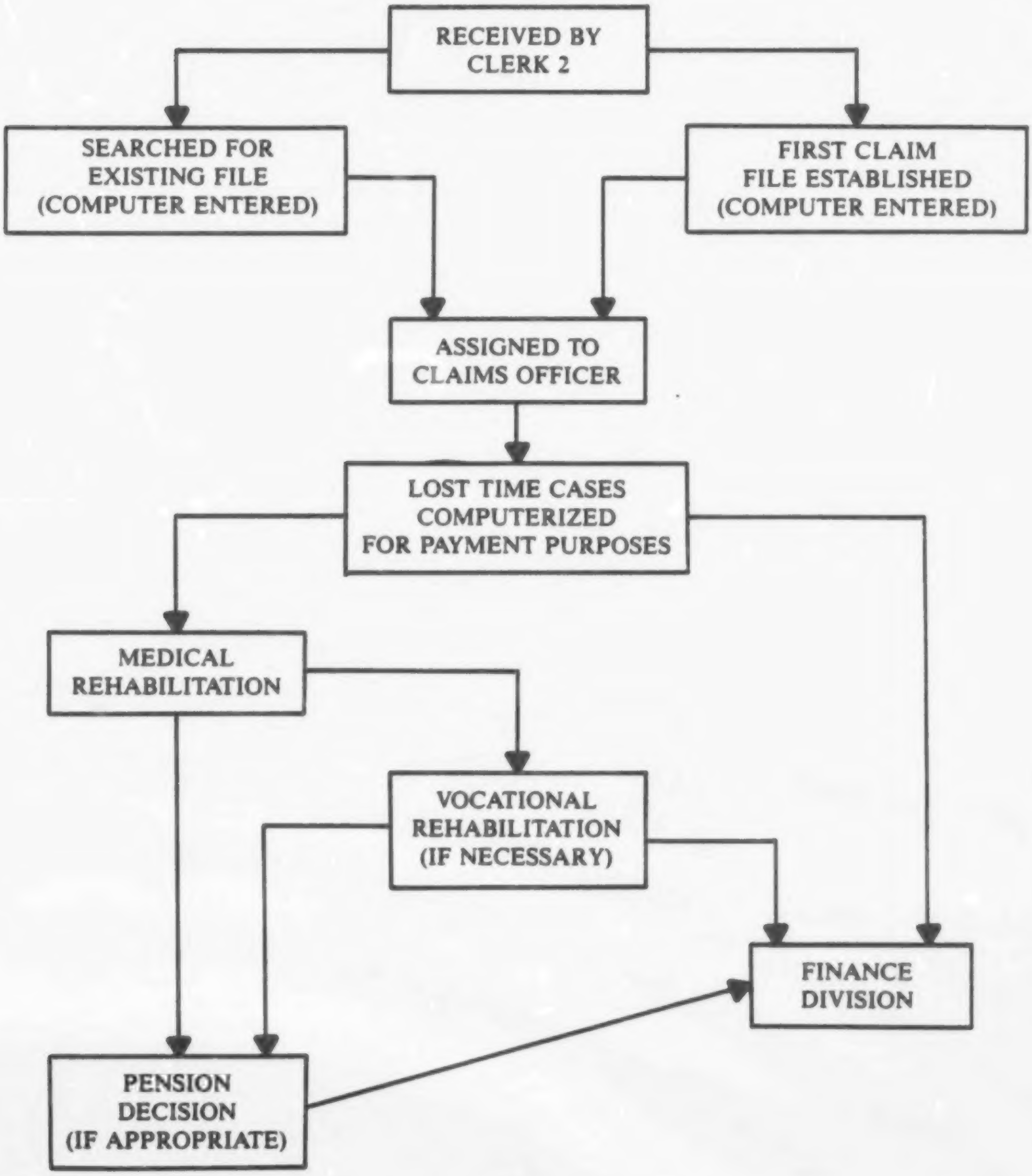
IN TIMES OF EXCESSIVE WORK OVERLOAD, THE DIRECTOR MAY REQUEST ADDITIONAL CLERICAL ASSISTANCE FROM THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION.

SCHEMATIC #13

DEPARTMENTAL FLOW OF CLAIMS APPLICATION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-109

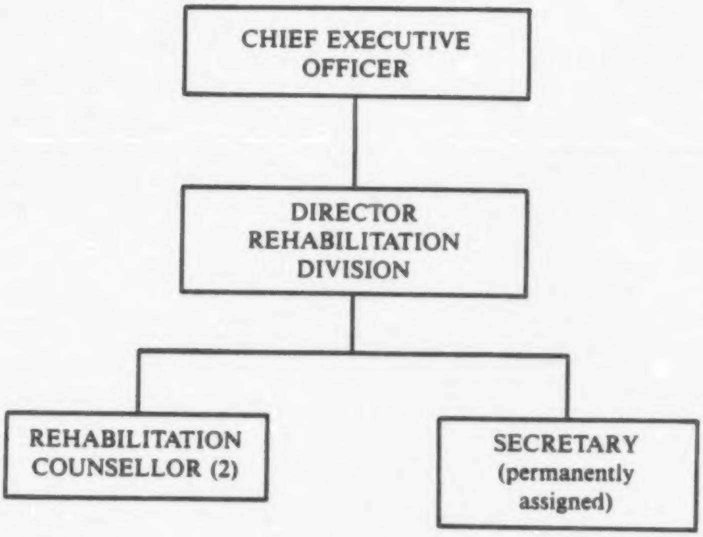

RECEIVED BY CLERK 2
SEARCHED FOR EXISTING FILE (COMPUTER ENTERED)
FIRST CLAIM FILE ESTABLISHED (COMPUTER ENTERED)
ASSIGNED TO CLAIMS OFFICER
LOST TIME CASES COMPUTERIZED FOR PAYMENT PURPOSES
MEDICAL REHABILITATION
VOCATIONAL REHABILITATION (IF NECESSARY)
FINANCE DIVISION
PENSION DECISION (IF APPROPRIATE)

SCHEMATIC #14

REHABILITATION DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-110


CHIEF EXECUTIVE OFFICER
DIRECTOR REHABILITATION DIVISION
REHABILITATION COUNSELLOR (2)
SECRETARY (permanently assigned)

THE DIRECTOR OF THE REHABILITATION DIVISION SHALL BE RESPONSIBLE TO AND REPORT TO THE CHIEF EXECUTIVE OFFICER.

THIS DIVISION SHALL BE COMPRISED OF TWO REHABILITATION COUNSELLORS AND A PERMANENTLY ASSIGNED SECRETARY.

SHOULD THE DIVISION NEED ADDITIONAL CLERICAL ASSISTANCE IN TIMES OF WORK OVERLOAD THE DIRECTOR MAY REQUEST SUCH ASSISTANCE FROM THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION.

SCHEMATIC #15

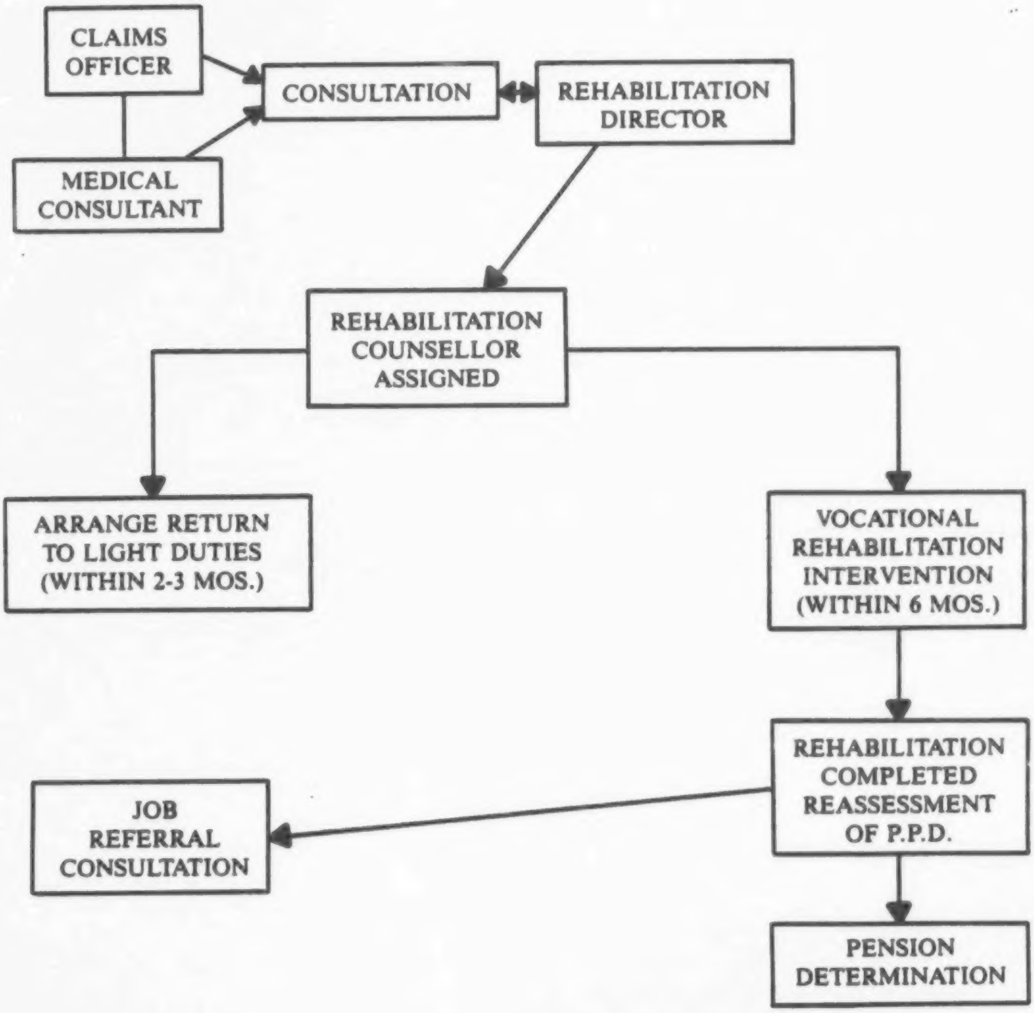
REHABILITATION SYSTEM

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-111

THE PREAMBLE TO OUR RECOMMENDATION L-33 AND THE RECOMMENDATION ITSELF, TESTIFY TO THE PRIORITY WE PLACE UPON REHABILITATION SERVICES.

IT IS CRITICAL THAT QUALIFIED COUNSELLORS BE HIRED INTO THESE POSITIONS.


CLAIMS OFFICER
MEDICAL CONSULTANT
CONSULTATION
REHABILITATION DIRECTOR
REHABILITATION COUNSELLOR ASSIGNED
ARRANGE RETURN TO LIGHT DUTIES (WITHIN 2-3 MOS.)
VOCATIONAL REHABILITATION INTERVENTION (WITHIN 6 MOS.)
REHABILITATION COMPLETED REASSESSMENT OF P.P.D.
JOB REFERRAL CONSULTATION
PENSION DETERMINATION

REHABILITATION SYSTEM

SCHEMATIC #15

WORKERS' COMPENSATION BOARD

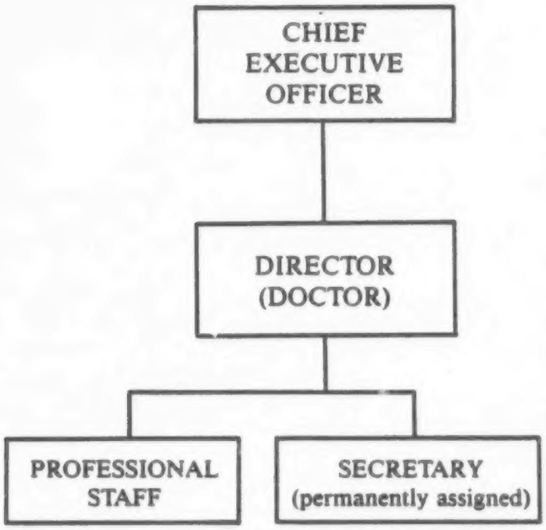
It is important to the process that, in each case which proceeds to rehabilitation that consultation shall take place between the Claims Officer concerned, the Medical Consultant and the Director, prior to the Director assigning the case to the Counsellor. It is important, as well, that the Director be briefed and up-dated on a regular basis with regard to the present standing of each case as it is processed through the various stages of the rehabilitation system.

SCHEMATIC #16

MEDICAL DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-112


CHIEF EXECUTIVE OFFICER
DIRECTOR (DOCTOR)
PROFESSIONAL STAFF
SECRETARY (permanently assigned)

THE DIRECTOR OF THIS DIVISION, WHO SHOULD BE A DOCTOR WHO IS QUALIFIED AND TRAINED IN OCCUPATIONAL MEDICINE, IS RESPONSIBLE TO AND REPORTS TO THE CHIEF EXECUTIVE OFFICER.

THIS DIVISION SHALL HAVE ASSIGNED TO IT A SECRETARY. SHOULD THE NEED ARISE FOR THE ASSISTANCE OF ADDITIONAL CLERICAL SERVICES IN ANY WORK OVERLOAD SITUATION, THE DIRECTOR MAY REQUEST SUCH ADDITIONAL CLERICAL SERVICES FROM THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION.

WE LEAVE IT TO THE ADMINISTRATION OF THE BOARD WITH REGARD TO DETERMINING THE NEED FOR ADDITIONAL PROFESSIONAL STAFF. HOWEVER, WE WOULD POINT THE BOARD TO PAGES 131, 132 AND 133 OF THE *MANITOBA REPORT* WHERE SOME CAUTION IS EXPRESSED WITH REGARD TO THE ROLE OF PROFESSIONAL STAFF WITHIN THE COMPENSATION SYSTEM.

WE WOULD NOT SUPPORT THE IDEA OF HIRING MEMBERS OF PROFESSIONAL STAFF ONTO THE BOARD FOR PURPOSES OF RELYING ON THEIR EXPERTISE IN MONITORING THE APPROPRIATENESS OF TREATMENT PRESCRIBED BY PHYSICIANS IN THE COMMUNITY, NOR WOULD IT BE APPROPRIATE THAT SUCH PROFESSIONALS COMMENT ON INDIVIDUAL CASES.

AS STATED IN THE *MANITOBA REPORT* AT PAGE 131:

> "REALISTICALLY, THE WORKERS' COMPENSATION BOARD CANNOT BE INTERVENTIONIST IN MEDICAL TREATMENT. THE COSTS OF HAVING THE NECESSARY SPECIALISTS IN-HOUSE WOULD QUICKLY BECOME PROHIBITIVE. EVEN IN THE EVENT THAT THE SYSTEM COULD BEAR THE COST OF A FULL STAFF OF APPROPRIATE SPECIALISTS, THIS MODEL IS, AS HAS ALREADY BEEN INDICATED, INAPPROPRIATE WITHIN THE WORKERS' COMPENSATION MODEL AS WE UNDERSTAND IT."

IN THIS REGARD WE CONCUR WHOLEHEARTEDLY.

CHAPTER FOUR

GENERAL RECOMMENDATIONS

WORKERS' COMPENSATION BOARD

REVIEW

GENERAL RECOMMENDATIONS

REGULAR REVIEWS

Changes to the work environment, including the nature and structure of chemicals, materials and machinery, are occurring at a rapid pace as technology develops and improves.

As a result, such change is occurring too rapidly for the compensation system to remain static over too many years without necessary modification in recognition of these changes. Therefore, we are prepared to recommend an amendment to the legislation which would provide for a regularized statutory review of the compensation system.

RECOMMENDATION G-113

A) THAT THE *WORKERS' COMPENSATION ACT* BE AMENDED TO REQUIRE A REVIEW OF THE WORKERS' COMPENSATION SYSTEM EVERY FIVE YEARS.

B) THAT THE AMENDMENT REQUIRE A BALANCED COMMITTEE OF EMPLOYERS REPRESENTATIVES AND WORKERS REPRESENTATIVES TO BE APPOINTED FOR SUCH A REVIEW.

C) THAT A NEUTRAL CHAIRPERSON BE APPOINTED FOR SUCH A REVIEW.

AUDITING THE REVIEW

In the *Report of the Workers' Compensation Review Committee,* Manitoba, May 1987, at Page 192 there is a recommendation made that a progress report be tabled in the Legislature on government's implementation, or proposed time table for implementation, of the review committee's recommendations.

> "One of the tests of any such review of a complex issue such as workers' compensation lies in the ultimate acceptability or rejection of the various ideas which have been put forward or recommended. In our case, we have given directions to both government and the Workers' Compensation Board for reform and change to the system. We feel that some sort of audit would occur as to which recommendations are accepted and which are rejected, with reasons being given in the latter instance.
>
> Government could be responsible through the tabling of a Report to the Legislature at the time the Annual Report of the Workers' Compensation Board is tabled. The Report could contain a list of the recommendations made which are pertinent to government (e.g. amendments to the law, appointments, consultation, etc.) and provide a timetable and listing of those which have been implemented, those which are to be implemented, and those which have been rejected.

> Similarly, the Workers' Compensation Board, either through inclusion of a special section in the Annual Report or through a separate Report, could do the same sort of listing of recommendations, with the appropriate timetable and acceptance/rejection status noted.
>
> We believe that such methodology will assure that serious consideration is given to the issues raised in this Report, issues which have been brought to us by both workers and employers. If either the Board or the government disagrees with our conclusions and does not wish to follow our recommendations, they should be prepared to clearly state this and provide reasons.
>
> If, then, the review process becomes a statutory provision and it is done on a regular basis, the recommendations of the future committees can be carefully monitored for implementation and impact, just as we hope our recommendations will be."

This Report of the Ministerial Action Committee, similar to the *Manitoba Report,* provides recommendation and direction, both to Government and to the Workers' Compensation Board, for re-organization and reform of the Compensation system for Prince Edward Island.

There are a large number of our recommendations which may be acted upon by the Board and which do not need any action by Government prior to implementation. However, there are critical legislative amendments which are necessary, before the Board may enter into implementation of what, we feel, are changes which are fundamental to the delivery of improved and necessary, benefits to injured workers and their families; fundamental to the critical need for re-organization; and, fundamental to a more efficient, effective and fair compensation system for our province.

Our recommendations and ideas are made as a result of the issues being brought to our review by both workers and employers. From what these parties have told us, they expect and look forward to positive changes in the system as a result of this review process.

This Committee is convinced that an audit is appropriate and necessary and therefore recommends as follows:

RECOMMENDATION G-114

> **A) THAT THE GOVERNMENT TABLE IN THE LEGISLATURE WITHIN ONE YEAR OF RECEIVING THIS REPORT, A PROGRESS REPORT ON THE ACTUAL IMPLEMENTATION, OR PROPOSED IMPLEMENTATION, OF THOSE RECOMMENDATIONS WHICH ARE WITHIN THE GOVERNMENT'S JURISDICTION.**
>
> **B) THAT THE WORKERS' COMPENSATION BOARD PUBLISH A SIMILAR PROGRESS REPORT IN ITS ANNUAL REPORT.**

LEGISLATIVE PRIORITY

At the heart of our recommendations for change is the critical need for the re-organization and re-structuring of the Board; and, to affect such re-organization successfully there exists the absolute need, we believe, to identify the individual who will captain the transition from the old system, to the new system.

The individual of whom we speak is, of course, the Chief Executive Officer.

Fundamental to the process of identifying and appointing the Chief Executive Officer, is the need for legislative amendment.

As a first step towards improvement of the compensation system for Prince Edward Island, we would encourage, indeed urge, Government to implement our Recommendations L-34, L-35, L-36, L-37, L-38 and L-39 as soon as possible. Such will allow for the hiring of the Chief Executive Officer and will remove such title from the Chair of the Board as presently exists in Section 20(2) of the Act.

Of course, we support and encourage the practice of "grandfathering" the existing members of the Board to the expiration of their natural term of office.

Indeed, the existing Board members will be important to the process of re-organization throughout it's implementation.

RECOMMENDATIION G-115

(A) THAT GOVERNMENT IMMEDIATELY MOVE TO AFFECT THE AMENDMENT OF THE WORKERS' COMPENSATION ACT IN ACCORD WITH OUR EARLIER RECOMMENDATIONS L-34, L-35, L-36, L-37, L-38 AND L-39.

(B) THAT THE BOARD, UPON THE AMENDMENT TO THE ACT AS PER OUR RECOMMENDATION ABOVE, IMMEDIATELY COMMENCE THE PROCESS OF IDENTIFYING AND APPOINTING THE CHIEF EXECUTIVE OFFICER.

ACKNOWLEDGEMENT

It would be irresponsible and unforgiveable, if we did not acknowledge all of those organizations and individuals who, without their input, knowledge, advice and enterprise, our task would have been made extremely difficult, if not impossible, to complete effectively.

It is particularly pleasing to this Committee that we are able to say that we have accomplished our task and that we have done so, well within the alloted time provided to us. It was only possible due to the tremendous cooperation afforded us by so many people.

The Committee wishes to compliment and thank all of those individuals and organizations who took the time to prepare their submissions, written and oral, and present their views and concerns to us during the public presentations back in October of 1989. Without their input, it is a certainty that this Report would be incomplete as we would have overlooked a number of serious issues and concerns related to injured workers benefits, employers interests and delivery of services matters.

We would commend and thank those Workers' Compensation Board advisors who were with us throughout our review. They responded professionally and admirably to any and all requests of the Committee and they were cooperative and candid throughout. We thank them for their invaluable support.

The Committee is thankful, as well, to the Director of the Occupational Health and Safety Division of the Department of Labour. He sat through all of the public hearings and the vast majority of Committee meetings and was always ready and capable of providing technical explanations to the Committee, when we needed such explanations; he provided to us his expert advice, with regard to the technicalities of occupational health and safety, whenever we ran into problems in those areas of interest, which often occurred.

We had the assistance of legal counsel, from time to time, and his expert advice and guidance in the technical legal field was of extreme benefit to us. We are thankful for this invaluable assistance.

At one point in our review we had the able assistance of the Executive Director of the Association of Workers' Compensation Boards of Canada. His presentation provided us with important information regarding Boards' practices and the variances in legislation throughout Canada. He also brought with him some personal advice, from his experienced background, with regard to future directions for compensation systems in Canada. We are indeed grateful that he was able to take time from his busy schedule to spend a day with us.

To the typist of the Report, we commend your professional and efficient work on our behalf. Throughout the months of February, March, April, May and June of 1990 you kept pace with our demanding schedule to provide us with the numerous draft copies of our developing Report. You never faltered in the face of this barrage of drafts, re-drafts and more re-drafts and you were forever able to have the new drafts before us at our weekly meetings. All of this you met without complaint, which attests to your professionalism, skills and great patience. We thank you very much.

Finally, it would be a dereliction of duty on the part of the Chairman, if he did not commend and thank each of the Committee members. Given the length and size of this Report and matters which were before you, I am proud to note that all matters were resolved via discussion; and, decisions reached by consensus. It was not necessary to call a vote on any matter. Such speaks highly of the quality and calibre of the members. Your cooperation, candor and good will was very much appreciated. Thank you.

CONCLUSION

This review was commissioned by the Government on April 13, 1989, and the Committee was provided a period of eighteen months to complete it's review and report to the Minister of Labour.

We have completed our mission and we are certain in our minds that this Report will serve to meet the needs of the system, into the future; and, will, if followed, remove a lot of the perceived problems and difficulties which were brought to our attention by workers, employers and Board staff.

The principles of Workers' Compensation as set out by The Honourable Sir William Ralph Meredith, C.J.O., in 1913, are fundamentally sound and are as valid today as ever they were.

We believe, from all we were told by the presenters in our public hearings, that workers and employers are committed to these principles and are committed to an improved compensation system. We are certain that the Board itself is similarly committed.

The Committee, in this Report, is pressing five main themes and they are: 1) THE NEED FOR OPENNESS ON THE PART OF THE BOARD; 2) THE NEED TO ESTABLISH AN INQUIRY MODEL AND RESIST THE ADVERSARIAL MODEL OF COMPENSATION; 3) IMPROVED LEGISLATION; 4) PROGRESSIVE PROGRAMS AND BENEFITS; AND, 5) STRUCTURAL REORGANIZATION.

To the reader of this Report, the Report may appear to be overly critical in some aspects, in regard to the legislation and the policies of Workers' Compensation.

Our criticisms of particular aspects of the legislation, policies and operations are meant to be constructive and we are not critical simply for the sake of being critical. We are concerned for the injured worker, the employer and the system itself and we provide, what we believe to be are viable and effective alternatives.

Workers' Compensation is a complex system and it is no easy task to administer such a program. We empathize with the Board members and the Board staff in their struggles in administering such a complex program and organization.

The change from the current organizational model to the proposed new structure will take time. We are cognizant of the myriad of obstacles which may rise up to deter its implementation, or its development; however, we are hopeful that such obstacles may be overcome and that implementation will indeed take place.

We believe our Report provides the critically important framework for an improved, viable, user friendly, fair, and effective compensation system.

APPENDIX "A"

STATEMENT

BY

MINISTER

APPENDIX "A"

STATEMENT BY MINISTER

HONOURABLE WAYNE D. CHEVERIE, Q.C.

MINISTER OF LABOUR

MR. SPEAKER, I am pleased to announce that Government has appointed a Ministerial Action Committee to undertake a comprehensive review of the Workers' Compensation Act and Regulations and of the operations of the Workers' Compensation Board.

MR. SPEAKER, concerns regarding the Workers' Compensation Act and the operations of the Workers' Compensation Board have been expressed by both sides of the Legislature.

As well, MR. SPEAKER, concerns regarding this Act have been expressed by both labour and management within our Province.

MR. SPEAKER, this Government has heard these concerns and we are a government that not only hears, but are prepared to listen and act, when concerns being expressed have merit.

I am pleased therefore, MR. SPEAKER, to announce that my Deputy Minister, Mr. Robert Crockett, has been appointed to chair a Ministerial Action Committee comprised of Mr. William Gillis, Mr. Brian Moriarity, Mr. Harry Snow, Mr. Ray McBride, Mr. Clive Cudmore and Ms. Francis Tremere to carry out this comprehensive review.

MR. SPEAKER, the mandate of the Committee is to undertake a comprehensive review of the Workers' Compensation Act and Regulations; to carry out a thorough review of the policies and practices of the Workers' Compensation Board; and, to review the structure of the Workers' Compensation Board.

MR. SPEAKER, this Committee has been allotted a time frame of eighteen (18) months, within which to make its report. The Committee is also mandated, should it feel it to be appropriate and necessary, to make an interim report referencing any matters which the Committee members may feel warrant the immediate attention of the Minister.

MR. SPEAKER, the Committee has been requested to meet and commence its' functions at the earliest opportunity.

APPENDIX "B"

COPY OF
NEWSPAPER ADVERTISEMENT
SEEKING PUBLIC INPUT

WORKERS' COMPENSATION MINISTERIAL REVIEW COMMITTEE

The Ministerial Review Committee appointed to carry out a comprehensive review of Workers' Compensation is seeking the input of individuals and organizations through written briefs and/or verbal presentation on matters related to the mandate of the committee.

MANDATE OF COMMITTEE:

1. To undertake a comprehensive review of the Worker's Compensation Act and Regulations;
2. To carry out a thorough review of the policies and practices of the Workers' Compensation Board;
3. To review the structure of the Worker's Compensation Board and
4. To report to the Minister of Labour on all these matters.

Written briefs (10 copies) should be forwarded to the Deputy Minister of Labour no later than September 15, 1989.

Any individual or organization wishing to appear before the committee to provide elaboration on their written brief,OR who might wish to make a verbal presentation only, should make their wish known to the Deputy Minister of Labour no later than September 15, 1989.

Bob Crockett
Deputy Minister of Labour
Chairperson
Ministerial Review Committee
P.O. Box 2000, Charlottetown, P.E.I. C1A 7N8
Telephone 368-5560

APPENDIX “C”

LIST OF PRESENTERS
WHO MADE
WRITTEN SUBMISSIONS

APPENDIX "C"

WRITTEN SUBMISSIONS RECEIVED FROM:

United Food and Commercial Worker's Union, Local 1252;

The Canadian Bankers' Association;

Mrs. S. B. Pursey;

A. S. Muzumdar, M.B., FRCPC;

Cavendish Farms;

The Construction Association of P.E.I.;

Dental Association of P.E.I.;

Dollar Home Improvement Ltd.;

The Greater Charlottetown Area Chamber of Commerce;

The Hospital Association of P.E.I.

The P.E.I. Division of the Canadian Manufacturers' Association;

Andrew MacLean;

Canadian Association of Industrial, Mechanical & Allied Workers;

The P.E.I. Council of Labour, Canadian Federation of Labour;

The P.E.I. Federation of Labour, Canadian Labour Congress;

The P.E.I. Nurses' Union;

The P.E.I. Union of Public Sector Employees;

The P.E.I. Council of the Disabled Inc.;

Miss Annette Morrison;

Leo Gill;

Stanley Sherren;

F. Leith MacNally;

Gary R. Watts;

Vera Doyle;

George Jess;

APPENDIX "C"

WRITTEN SUBMISSIONS RECEIVED FROM: CON'T . . .

David O'Halloran;

Thomas W. Klewin;

Don MacNally;

Everett Raynor;

John Sampson;

Mrs. Jessie Sorrey;

Frank Dixon;

The P.E.I. Advisory Council on the Status of Women;

The P.E.I. Civil Service Commission;

The P.E.I. Human Rights Commission;

Kenneth Fear;

Keir MacLeod Vinyl Siding;

Ron Kelly;

Canadian Federation of Independent Business;

St. John Ambulance.

APPENDIX "D"

PUBLIC HEARINGS'

SCHEDULE

APPENDIX "D"

PUBLIC HEARINGS' SCHEDULE:

Wednesday, October 18, 1989, Public Utilites Commission Boardroom, 5th Floor, Confederation Court Tower, Charlottetown

1:00 p.m. - 8:15 p.m.

APPEARANCES:

Ms. Annette Morrison;

Mr. Edgar Doucette;

Mr. Phillip Wood;

Mr. Leo Gill;

Mr. Stanley Sherren;

Mrs. Doris Pursey;

Mr. Gary Watts;

Mr. John Sampson;

Thursday, October 19, 1989, Public Utilities Commission Boardroom, 5th Floor, Confederation Court Tower, Charlottetown

1:00 p.m. - 8:15 p.m.

APPEARANCES:

Mr. Brian Dollar (Dollar Home Improvements Ltd.);

Mr. Francis Reid (Construction Association of P.E.I.);

Mr. Roger Perry (P.E.I. Road Builders Association);

Dr. D. William Allen (Dental Association of P.E.I.);

Mr. Greg MacCallum;

Mr. John Gallant;

Mr. Terry Dunsford.

APPENDIX "D"

PUBLIC HEARINGS' SCHEDULE: CON'T . . .

Monday, October 23, 1989, Public Utilities Commission Board-room, 5th Floor, Confederation Court Tower, Charlottetown

1:00 p.m. - 8:15 p.m.

APPEARANCES:

Ms. Anne Lie Neilson (P.E.I. Council of the Disabled);

Mr. Chuck Hickey (P.E.I. Division, Canadian Manufacturers' Association);

Mr. Ross MacDonald (Canadian Bankers' Association);

Ms. Rita Ryan Sabada (P.E.I. Federation of Labour - C.L.C.);

Mr. Keir MacLeod (Keir MacLeod Vinyl Siding);

Mr. George Jess;

Mr. David McKenna;

Mr. Harry MacDonald (Union of Public Sector Employees);

Mr. David Kassner;

Thursday, October 26, 1989, Linkletter Motel, Beattie Room,

Summerside - 1:00 p.m. - 8:15 p.m.

APPEARANCES:

Mr. Robert Hamilton (Hospital Association of P.E.I.);

Mr. Ted Crockett (P.E.I. Council of Labour - C.F.L.);

Mr. Ray Gallant (United Food and Commercial Workers' Union, Local 1252);

Mr. Clare Batchelor (Cavendish Farms);

Mr. Thomas Klewin;

Mrs. Elaine MacEachern

Mr. Gordon Ferrish.

APPENDIX "E"

COMPARISON OF DEPENDENCY BENEFITS

APPENDIX "E"

DEPENDENCY BENEFITS

British Columbia

For Cases Prior to July 1, 1974	Effective January 1/89
*1. Dependent widow, invalid husband or common-law wife	$793.95 month
*2. Dependent child to age 16 (includes invalid child of any age unless covered below)	$251.08 month
Dependent child to age 18 and at school	$271.41 month
Dependent child to age 21 and at school	$293.81 month
*3. Dependent orphan to age 16 (includes an invalid orphan of any age unless covered below)	$271.41 month
Dependent orphan to age 21 and at school	$315.08 month

*If the dependants are children, a widow with children, an invalid spouse or a widow of age 50 or over, and they are not entitled to or receiving CPP benefits, additional compensation benefits are payable at $259.69 monthly for a dependent spouse and $80.59 for each child. Where CPP benefits are payable but are less than the additional benefits mentioned, the Board shall pay the difference.

For Cases From July, 1, 1974 to April 16, 1985, Inclusive:
(Note: All pension payments are subject to escalation every January 1st and July 1st.)

Current Benefits: (Dollar amounts effective January 1, 19[illegible])

1.	Funeral Allowance	$1,790.72
	Incidental Expenses	$ 596.91
	Transportation	$ 596.91
2.	Widow's Lump Sum	$1,492.38

3. (a) For a dependent widow (including an invalid spouse or common-law wife) and two children, the equivalent of the compensation which would have been paid to the worker for permanent total disability, less the amount of CPP benefits

payable. (Compensation is based on worker's average earnings; minimum average used is $20,892.41)

(b) For a dependent widow, etc., and one child, the award is 85 % of the amount payable under 3(a) above, less CPP benefits.

(c) For each additional child beyond two in number, $193.94 per month is payable.

(Note: Child means a person under 18 years of age; an invalid child or person under 21 who is regularly attending a place of education).

4. For a dependent widow, etc., of age 50 or over, or an invalid spouse, an award of 60% of the amount payable under 3(a) (less CPP) but not less than $626.67 per month.

5. For a dependent widow under age 40, with no dependent children, or a non-invalid widower of any age, a lump sum of $29,846.25 is payable (not applicable to invalid widow/spouse).

6. For a dependent widow age 40 to 50 with no dependent children, the total of a monthly pension of $626.67 plus one eleventh of the difference between $626.67 and the amount which would have been payable under 4 above for each year between age 40 and 49.

7. On remarriage, a lump sum is payable equal to two years' pension, but total widow benefits shall not be less than $29,846.25 as payable under 5 above plus the widow lump sum in 2 above and the funeral expenses as detailed in 1 above.

8. For one dependent child (where no widow, etc), 40% of the amount under 3(a) above is payable less CPP benefits.

   - For two children, 50% of that amount less CPP.
   - For three or more children, 60% of that amount plus $193.94 per month for each child over three in number.

9. For other dependants, up to $343.22 per month is payable depending on pecuniary loss.

For Cases on or After April 17, 1985: Amounts are the same as above, except widowers are to receive the same benefits as widows; and common-law husbands are to receive the same benefits as common-law wives.

Alberta

General:

The minimum rate for a spouse and after January 1, 1974, a spouse and children, effective July 1, 1986, is $730 per month.

The minimum rate for children, effective July 1, 1986, is $150 per month.

The maximum rate for a spouse and children, effective January 1, 1989, is $2,202.60 per month.

Effective July 1, 1986, an 8% increase was applied to pensions where the minimums are not applicable, the new amounts are not to exceed the maximum monthly rate in effect.

Dependent children, not residing with the dependent spouse, receive the minimum for a dependent child or an amount considered appropriate by the Board.

If there is no surviving spouse or the spouse subsequently dies or is confined to an institution, the Board may make additional payments of up to $75 per month per child to assist in maintenance and support. (Increase to $75 per month effective July 1, 1986).

The Board may pay additional amounts to dependent spouses or children under necessitous circumstances because of illness.

Other dependents may be paid amounts proportionate to the loss. Aggregate payments to all dependents shall not exceed the maximum compensation rate for total disability, applicable to the particular case.

Accidents Prior to January 1, 1974

Spouses receive the minimum rate plus the minimum for each child as a flat rate pension. The additional payments for children continue until the dependent child attains the age of 18 years, to age 25 while continuing school, or to any age if the child is an invalid.

Accidents From January 1, 1974 to December 31, 1981

A spouse and dependent children receive an award equivalent to the pension the worker would have received for permanent total disability. Where there is no dependent spouse, a foster parent or foster parents would receive or divide the minimum pension payable to a spouse and receive the minimum for a child for each child in their care.

Accidents After January 1, 1982

A dependent spouse and children receive the amount which would have been payable to the worker for permanent total disability using the 90% of net income calculation method.

Where the spouse is gainfully employed, can become gainfully employed, or refuses to seek gainful employment with the assistance of the Board's Vocational Rehabilitation Department, the pension is gradually reduced. The reduction from the date of accident or date of first employment or date of refusal to seek employment consists of payment of 100% of the pension for the first year, 80% of the pension for the second year, 60% of the pension for the third year, 40% of the pension for the fourth year, 20% of the pension for the fifth year and no payment thereafter. The care of children under the age of 18 years, the advanced age of the spouse, invalidity and similar factors are considered valid reasons for not being gainfully employed and the full pension would continue while such status exists.

Where there are dependent children but no dependent spouse, a guardian shall be paid the same amount as a spouse until the youngest child reaches the age of 18 years at which point the reducing pension previously described is payable and divided among the surviving children. If there is more than one guardian, the pension may be divided. Guardianship refers to situations where the worker was caring for the children at the time of the fatal accident, not situations where the children were already under the care of another party.

Saskatchewan

Deaths Prior to January 1, 1980.

Dependent Spouse with or without Children

Spousal benefit of $500* per month is payable with additional basic monthly payment of $229.16 per month for each dependent child under age 16, between age 16 and the end of the school term in which a child continuing its education reaches age 21 or an invalid child of any age. Automatic minimum of $898.99 monthly is awarded if total of payments is less. The spousal allowance is reduced to $530 per month at age 65. No CPP offset is allowed where the minimum compensation is provided. A dependent spouse is eligible to receive an additional monthly amount of $200 (effective January 1, 1987) for each dependent child to age 16 or age 18 if child is in full-time attendance at school. Cost of tuition, books and related fees are also provided as for deaths after January 1, 1980.

*Comprised of $325 per month to death or remarriage plus supplement of $175. (CPI applies to supplement only).

Dependent Children Only

$229.16 per month is payable for each child under 16 or between age 16 and the end of the school term in which a child continuing its education reaches age 21, or an invalid child of any age. For orphans under age 16 such additional amounts are paid as the Board in its discretion decides.

Other Dependants

Awards in recognition of pecuniary loss are payable as determined by the Board.

Note: All payments subject to annual escalation on basis of CPI changes.

Deaths on or After January 1, 1980

Dependent Spouses

An amount equal to that which would have been payable to the worker for total inability to work subject to current minimum of $898.99 monthly and maximum of $2,521.20* monthly. The allowance is payable for no less than five years. Benefits may be continued beyond five years if termination would result in undue hardship. Full rehabilitation services are available to the spouse to promote independence.

*Assumes a worker and two dependants.

Dependent Spouse with Children

Payment is for the greater of five years or until the youngest child reaches age 16. The benefits are also continued until any dependent child in full-time attendance at a secondary or post-secondary institution attains the age of 18.

Minimum for Child of 18 or Over-Continuing Education

Each dependent child of a deceased worker who is 18 in full-time attendance at a secondary or post-secondary institution is eligible to receive a monthly allowance equal to $200 effective January 1, 1987. Payment continues until the end of the month in which age 21 is attained. At age 18, each dependent child of a deceased worker in full-time attendance at a post-secondary institution is eligible to receive an amount equal to the cost of tuition, books and other fees. Such payment does not continue past age 21.

Other Dependants

Awards in recognition of pecuniary loss are payable as determined by the Board.

CPP Offset

After 12 months from commencement of loss, 50% of survivors' benefits under the CPP are treated as income for the calculation of benefits. No offset is allowed where minimum benefits are in effect.

Benefits are subject to annual review based on CPI changes.

Manitoba (Effective July 1, 1987)

Where death is prior to January 1, 1974* as a result of an accident (section 28.1)

1.	Sole dependent widow or invalid widower	$751 per month
2.	Children under 16 years of age, with widow	$169 per month each
3.	Orphan children under age 16	$188 per month each
4.	Children over 16 and continuing education, extra	$ 19 per month each
	Orphans over 16 continuing education, extra	$ 20 per month each
5.	A wholly dependent parent of the worker, up to	$152 per month
6.	For other dependants, amounts payable are based on pecuniary loss, but not exceeding $152 per month for one or $303 (maximum) per month for more than one such dependant.	

The maximum payable is 75% of a worker's earnings subject to a minimum according to number of dependants. [Section 28(2)]

Where death occurs After December 31, 1973 as the result of an accident, the award payable to the spouse shall be the greater of the compensation that would have been paid to the deceased if he had survived but had been permanently and totally disabled, or as provided in Section 25 [s.29 1(a)(b)].

Where payments are the same as those of permanent total disability, they are subject to the permanent disability escalation clause.

Ontario

For All Deaths Prior to April 1, 1985 (Flat rate benefits effective January 1/89)

Sole dependent spouse or consort -	$813.84 month
Dependent child with dependent spouse or equivalent -	$227.26 month each
Dependent orphan child -	$253.94 month each

Children's benefits payable to age 16 and continued during education are at the Board's discretion.

For invalid children, there is no age limit for payment of dependent child benefits.

For other dependants (only payable if no regular dependants), awards are payable for pecuniary loss as determined by the Board, to the maximum of $813.84 per month.

There is no limit on aggregate benefits.

Dependent benefits are also payable on death of permanently totally disabled pensioner regardless of cause of death.

Spousal benefits are payable for life regardless of remarriage (as of April 1, 1985).

For Deaths on or After April 1, 1985 (Effective January 1, 1989)

Lump Sum to Spouse:	$46,156.57 increased by $1,153.92 for every year under 40 years of age or reduced by $1,153.92 for every year over age 40. Range $23,078.28 - $69,234.85.

Monthly Pensions:

Spouse - no children:	40% net average earnings - add 1% for every year past 40 years of age, or subtract 1% for every year under 40. Range 20% - 60% of net average earnings.

Spouse with 1 or more children	90% of net average earnings at time of injury payable until youngest child reaches age 19.

A spouse entitled to a life pension, at a percentage, based on the spouse's age on the day following the youngest child reaching age 19. Where the Board is satisfied that it is advisable for a child or children over age 19 to continue education, the Board will pay for each child 10% of the net average earnings of the worker, but the total benefits to the spouse and children shall not exceed 90% of the net average earnings of the worker.

Children - no spouse	- 1 child, 30% net average earnings; - 2 or more children, 30% net average earnings plus 10% each additional child after the first; - maximum 90% net average earnings; - $46,156.57 lump sum payment also applies to such children as a group; - no age limit for invalid children.
Other dependants:	Where there is no dependent spouse or children, benefits are based on loss as determined by the Board, the maximum being 50% of net average earnings. Effective January 1, 1989, all pensions for deaths after March 31, 1985, increased by 4.2%.

C.P.P. Offset

For pension calculations, any CPP dependency pension is deducted from the average earnings of the worker on which the compensation pension is based.

Quebec

1. The spouse of the deceased worker is entitled to a lump sum indemnity from $58,831 to $114,000 varying with age of the spouse as established by the law.

2. The pension payable is equivalent to 55% of 90% of net weighted income for a period determined by the law.

3. For a minor child, a pension of $295 monthly per child until full age.

4. A full age child is entitled to a lump sum of $10,590 if attending an educational institution on a full-time basis at the time of death.

5. An invalid full age child is entitled to a lump sum of $58,831 if not receiving benefits from other sources or to $10,590 if receiving such other benefits.

For persons other than spouse and children:

(a) If needs were provided for by the worker in excess of 50% and less than 35 years old, there is entitlement to a lump sum of $7,060.

(b) If needs were provided for by the worker in excess of 50% and more than 35 years old, there is entitlement to a lump sum of 75% of gross annual income of the worker.

(c) If invalid, a lump sum of $58,831 at age 18 or less, ranging downwards on the basis of age to $29,416 at age 65 or over, if not receiving benefits from other sources; if receiving such other benefits, paragraphs a) and b) apply.

For any other person not previously mentioned whose needs were provided for by the worker:

- from 25% to 50%, entitlement to a lump sum of $7,060.
- from 10% to 25%, entitlement to a lump sum of $3,530.

The father and mother of a worker who died without dependants are entitled to a lump sum of $3,530. each. The share of a deceased parent or of a parent deprived of parental authority accrues to the other parent.

New Brunswick (Earnings related system adopted for accidents from January 1/82)

For a dependent spouse who does not work, (with or without children) 80% of the deceased worker's calculated net earnings; less any CPP benefit entitlement for the spouse only. Maximum benefit based on 150% of Industrial Aggregate Earnings for the year (1989 = $34,000) is $22,687.87 or $1,890.65 monthly less the spouse's CPP entitlement.

For a working dependent spouse, the net family income (after tax, UIC and CPP contributions) is calculated and if the compensation before reduction by CPP entitlement, plus the spouse's net income is greater then 90% of the pre-accident family net income, the compensation is reduced by the amount of excess of 90% and the CPP benefit is then deducted.

If the spouse remarries (including common-law union), the spouse receives a lump sum equal to one year's benefit and flat rate children's benefits become payable. These are percentages of the Industrial Aggregate Earnings and are paid to the spouse on behalf of the child to and including age 17. The percentages are:

Ages:	0 - 6	10%	($189.07 monthly)
	7 - 13	12.5%	($236.33 monthly)
	14 - 17	15%	($283.60 monthly)
	(and also all invalid children regardless of age)		

For children age 18 to 22 and continuing their education, the same as for age 17 plus such other supplements as the Board may award. Children's benefits increase with age. Where there is no surviving spouse or a surviving spouse dies, the children's benefits in the prior paragraph are payable to their guardian.

For dependants other than spouse of children, amounts proportionate to pecuniary loss are payable as determined by the Board.

The maximum aggregate benefits are limited to the amount payable if the deceased had been totally disabled (90% of net income).

Benefits for a spouse change at age 65 to an annuity based on funding at 8% of all amounts paid in benefits prior to age 65 with no offset against CPP benefits.

Deaths Prior to January 1, 1982

A dependent spouse receives 40% of the New Brunswick Industrial Aggregate Earnings as benefits. In 1989, $756.26 monthly is payable (40% net of $22,687.87).

Dependent children are entitled to the same amounts as in paragraph 3 above.

Spouse benefits do not change at age 65 nor is CPP offset applied.

Benefits are adjusted annually by the percentage increase in the Industrial Aggregate Wage.

Children's benefits are adjusted as age increases.

If a spouse remarries, the benefits change as for spouse under new system.

Prince Edward Island - (Effective April 1, 1985 for all cases)

Sole dependent spouse -	$450 per month
Children to age 18 or continuing education to age 21	$100 each monthly
Orphans to age 18 or continuing education to age 21	$115 each monthly
No age limit for invalid children	
For other dependants	$ 60 monthly for one
Where no regular dependants	$ 80 maximum

There is no aggregate limit on benefits.

Nova Scotia - (Effective January 1, 1989 for all cases and CPI Indexed)

Sole dependent spouse	$641 per month
Children to end of school year in which age 18 is reached	$169 per month
Orphans to end of school year in which age 18 is reached	$169 per month

Benefits are paid to age 21 for those continuing their education. No age limit is set for invalid children.

For other dependants where no regular dependants	$206 per month for one, maximum of $269 per month.

Newfoundland and Labrador (Effective January 1, 1988)

For Pre-1982 Cases Only

Dependent spouse	$546.34 per month. Payable for life or until remarriage
Children and orphans	$133.26 per month to age 16 (may continue to age 21 as an

educational
allowance).

There is no age limit for invalid children.

Other dependants (where there is no spouse or children), on the basis of pecuniary loss as determined by the Commission.

For Accidents January 1, 1982 to December 31, 1983

For the dependent spouse, a lump sum equal to 250% of the annual rate of compensation that would have been payable to the worker for total disability, i.e.: 75% of average earnings subject to the maximum earnings covered. On January 1, 1982, the yearly maximum earnings covered was $21,000; this was increased to $45,500 per annum effective January 1, 1983.

Where the spouse has children under age 16, is an invalid or is age 50 or over at the time of the injury, a monthly pension is payable in addition to the lump sum. The monthly award is paid at 75% of the rate of compensation which would have been paid the worker for total disability.

Where the spouse is over 35 but under 50, has no dependent children under 16 and is not an invalid, a reduced pension is payable at 1/15th of the pension payable in the prior paragraph for each year of age above 35.

For children age 16 to 21, an educational allowance of $133.26 a month may also be payable.

Spouses' Pensions are payable to remarriage or age 65.

The provisions in the previous section relating to Children and Orphans and Other Dependants apply.

For Injuries on or After January 1, 1984

Compensation is payable on the basis of the provisions as stated in the immediately preceding section, except that calculations are done on 90% of the worker's net earnings, instead of 75% of gross wages. Benefits to dependent children may be continued to age 25 for furthering their education.

Northwest Territories

Lifetime pensions are payable, tied to the YMIR, with no offsets for CPP benefits.

A dependent spouse receives $1,100 per month (based on 2.75 percent of YMIR).

Children to age 16 or continuing with education to obtain their first degree receive $250 per month (based on five-eights of 1.00 percent of YMIR).

For orphan children, the award payable to a foster parent is the children's benefits plus a monthly allowance not exceeding the amount payable to a dependent spouse.

For other dependants, the Board may make payments for pecuniary loss up to a maximum of $1,100 per month but only when there are no regular dependants.

Yukon Territory - (Effective January 1, 1989 for all Cases)

Sole dependent spouse	$1,132 per month
Invalid Children	$367 per month each
Dependent children and orphans to age 18, continuing to 21 for education	$339 per month
Additional discretionary allowance to orphans	$ 28 per month

There is no age limit for how long benefits are paid for invalids.

Discretionary allowances for up to $51 each as Board determines for illness of spouse or child.

For other dependants, where no regular dependants, payment for pecuniary loss as determined by the Board.

All benefits are increased annually on basis of CPI change.

APPENDIX "F"

FINAL REPORT ON
LAWS RELATING TO
LIABILITY OF EMPLOYERS

BY

THE HONOURABLE SIR WILLIAM RALPH MEREDITH, C.J.O.

FINAL REPORT

ON

Laws Relating to the Liability of Employers

To Make Compensation to their Employees for Injuries received in the course of their employment which are in force in other countries.

By

THE HON. SIR WILLIAM RALPH MEREDITH, C.J.O.,
COMMISSIONER.

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1912.

Final Report

ON

LAWS RELATING TO THE LIABILITY OF EMPLOYERS TO MAKE COMPENSATION TO THEIR EMPLOYEES FOR INJURIES RECEIVED IN THE COURSE OF THEIR EMPLOYMENT WHICH ARE IN FORCE IN OTHER COUNTRIES, AND AS TO HOW FAR SUCH LAWS ARE FOUND TO WORK SATISFACTORILY.

By

THE HON. SIR WILLIAM RALPH MEREDITH, C.J.O., Commissioner

To His Honour SIR JOHN MORISON GIBSON, K.C.M.G., K.C., LL.D., *Lieutenant-Governor of the Province of Ontario.*

MAY IT PLEASE YOUR HONOUR:

I have the honour to report that I have concluded the enquiries which I was by Your Honour's Commission bearing date the 30th day of June, 1910, appointed to make " as to the laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily," and on the first day of April, 1913, I submitted to Your Honour a draft bill embodying such changes in the law as in my opinion should be adopted in this Province, and I now proceed to state my reasons for recommending that the draft bill should be passed into law.

At the outset of the enquiry it was contended by those who spoke on behalf of the workingmen: (1) That the law of Ontario is entirely inadequate in the conditions under which industries are now carried on to provide just compensation for those employed in them who meet with injuries, or suffer from industrial diseases contracted in the course of their employment; and (2) that under a just law the risks arising from these causes should be regarded as risks of the industries and that compensation for them should be paid by the industries.

With these two propositions those representing the employers expressed their agreement, though it is fair to say that it was probably not intended to agree that compensation should be paid in respect of industrial diseases.

Agreeing as I did with the contention of the workingmen there remained only to be considered in what form and by what means the compensation should be provided.

For the purpose of reaching a conclusion as to this, and in obedience to the directions of the Commission, I made enquiry as to the laws in force in the principal European countries, in the United States of America and in the Provinces of Canada. I also visited Belgium, England, France, and Germany, and consulted those concerned in administering the laws of those four countries, and others qualified to judge as to whether they have been found to work satisfactorily. Much evidence has been taken bearing upon the general question, all of which appears in the appendix to my first interim report, dated the 27th day of March, 1912, and the appendix to this report.

Before referring to the different systems in operation it may be proper to say that most of these laws, and perhaps all of them except the German, have not been in force long enough to enable a conclusive opinion to be formed as to their merits or demerits.

There are two main types of compensation laws. By one of them the employer is individually liable for the payment of it, and that is the British system. By the other, which may be called the German system, the liability is not individual but collective, the industries being divided into groups, and the employers in the industries in each group being collectively liable for the payment of the compensation to the workmen employed in those industries—practically a system of compulsory mutual insurance under the management of the State. The laws of other countries are of one or other of these types, or modified forms of them, and in most, if not all of them, in which the principle of individual liability obtains, employers are required to insure against it.

Those representing the workingmen at the beginning of the enquiry appeared to favour the adoption of the British system. Mr. F. W. Wegenast, who represented the Canadian Manufacturers Association, strongly urged the adoption of the German system, and his view was supported by most of the other employers who appeared or were represented before me, and later on in the enquiry the representatives of the workingmen fell in with Mr. Wegenast's views.

There were, however, differences of opinion as to details. The employers insisted that a part of the assessments to provide for the payment of the compensation should be paid by the employees, and this was vigorously opposed by the representatives of the workingmen. The employers desired that no compensation should be payable where the injury to the workman did not disable him from earning full wages for at least seven days, and to this the representatives of the workingmen objected. The employers also desired that, as the British act provides, an employee should not be entitled to compensation if his injury was due to his own serious and wilful misconduct, but the representatives of the workingmen objected to any such limitation of the right to compensation.

As stated in my first interim report, I had then come to no conclusion as to these matters, or as to what system of compensation I should recommend for adoption, nor had I reached a conclusion as to the industries to which the law should be made applicable, nor as to certain other details which I enumerated in my report.

After the best consideration I was able to give to the important matters as to which I was commissioned by Your Honour to make recommendations, I came to the conclusion, to which I still adhere, that a compensation law framed on the main lines of the German law with the modifications I have embodied in my draft bill is better suited to the circumstances and conditions of this Province than the British compensation law, or the compensation law of any other country.

I have had the benefit of hearing the opinions of Mr. Miles M. Dawson, Mr. S. H. Wolfe, Mr. P. Tecumseh Sherman, and Mr. F. W. Wegenast, all of whom have given special attention to the subject of compensation laws and industrial accident insurance, as to the operation of those laws, and as to the best form of compensation law to be adopted under the conditions which obtain in this Province.

and also of hearing the opinions of Mr. James Harrington Boyd, who had a large part in framing the compensation law passed by the Legislature of the State of Ohio, and of Mr. F. W. Hinsdale, the chief auditor of the Industrial Insurance Board of the State of Washington, as to the operation of the compensation laws of those States, and also upon the general question as to the best form of compensation law for this Province.

These gentlemen differed widely in their opinions as to the best form of compensation law, as will be seen from their testimony and arguments which appear in the appendices to my report, and from the memoranda submitted by Mr. Wolfe and Mr. Sherman, although they are practically unanimous as to the industries bearing the burden of the compensation, and, with the exception of Mr. Wegenast, they are all of opinion that this burden should be borne equally by the employer and employed.

Mr. Sherman is opposed to the system of collective liability, which he characterizes as unjust because it imposes upon the individual employer the obligation of sharing the burden of accidents in other establishments than his own and, as he assumes, notwithstanding that by the introduction of the best machinery and appliances and safeguarding against accident he has reduced the number of accidents in his establishment to a minimum, he is placed as respects his liability to pay compensation on the same footing as an employer whose machinery and appliances are defective and who takes little or no precaution to guard against accidents in his establishment.

If a uniform rate were payable by all the employers in a class or sub-class, regardless of these considerations, I agree that there would be the injustice which Mr. Sherman points out, but I have in the draft bill which I have submitted introduced provisions (sec. 71, s.s. 2 and 4) which, in my opinion, will provide against that happening.

The arguments presented by Mr. Dawson and Mr. Wegenast, and perhaps those of Mr. Wolfe, in favour of the collective system are, I think, unanswerable if, as I believe, the true aim of a compensation law is to provide for the injured workman and his dependants and to prevent their becoming a charge upon their relatives or friends, or upon the community at large.

It is in my opinion essential that as far as is practicable there should be certainty that the injured workman and his dependants shall receive the compensation to which they are entitled, and it is also important that the small employer should not be ruined by having to pay compensation, it might be, for the death or permanent disability of his workmen caused by no fault of his. It is, I think, a serious objection to the British act that there is no security afforded to the workman and his dependants that the deferred payments of the compensation will be met, and that objection would be still more serious in a comparatively new country such as this, where many of the industries are small and conditions are much less stable than they are in the British Isles.

This objection could, of course, be met by making it obligatory upon the employer to insure his workmen against accident to the maximum amount to which they or their dependants would be entitled under the act, but if insurance is to be compulsory I see no reason why the cheapest form of it—mutual insurance—should not be prescribed.

I agree also with Mr. Dawson that the ultimate burden of paying the compensation under such a law as is proposed falls upon the community and that whatever the employer has to pay, whether directly by way of compensation, or if he insures against his liability by paying insurance premiums, forms part of the cost of that which he produces and is added to the selling price.

Mr. Sherman's view is that insurance should be made compulsory "only if and when reasonably necessary in order to assure to the injured workmen the payment of their compensation," and that "in no event should those concerns that are amply able to carry their own insurance be required to buy insurance or contribute to a State scheme. for that," he says. "would be pure economic waste."

I do not understand the latter argument or how there can be said to be economic waste if the "concerns" he mentions are not required to do more than contribute with other employers to the payment of compensation according to the hazard of their respective businesses. I could understand that there might be economic waste if it were incumbent on such an employer to insure with a joint stock company which would require him to pay a premium sufficient to provide for the cost of securing the business and a reasonable dividend to its shareholders as well as to indemnify against the risk undertaken.

There was much discussion as to the basis on which the assessments to provide the compensation should be made. The German law provides for assessing only for the amounts required to meet the payments of compensation which fall due during the year next preceding that in which the assessments are made, with an added percentage to provide a reserve fund to meet deficiencies in the accident fund in the event of an unusual catastrophe or a depression in trade, but no assessment is made beyond that to meet the deferred payments of compensation, i.e., the payments which are to become due in future years. This plan, popularly called the current cost plan, is that proposed by the Canadian Manufacturers Association, and Mr. Dawson favours it as not only expedient because it does not involve making the heavy assessments which would have to be made at the outset if the capitalized value of the deferred payments had to be provided for by the assessments, but also as "not unfair to the employers in future years, or economically unsound."

On the other hand the current cost plan is vigorously denounced by Mr. Sherman, who contends that it is manifestly unfair to the employer of the future because it shifts upon his shoulders part of the burden of compensating for accidents which have happened before he became an employer, and that it results in low assessments in the early years of the operation of the law, and necessarily increases in the later years. until in a measurable period of time they become a burden too oppressive for the employer of the future to bear.

In support of his view Mr. Sherman referred to the rates in Germany, which he said, "now average about double what they were at the beginning," and he added that "it is calculated that they will not reach their stable maximum for some twenty years more. How much more they will then be no one knows, but the majority guess is they will then double."

Mr. Wolfe is equally emphatic in his condemnation of the current cost plan, and in addition to his oral testimony presented a table which appears on page 147 of the appendix to this report, and which he contended demonstrates the accuracy of his conclusions.

The views of Mr. Sherman and Mr. Wolfe were controverted by Mr. Wegenast, who contended that statistics prove that in some instances the stable maximum has already been reached and that there is nothing to justify the gloomy forebodings of Mr. Sherman as to the future.

Mr. Wegenast's contention is hardly supported by Mr. Dawson, whose opinion (page 452, appendix to first interim report) is that there will be an increasing rate "which is estimated to increase pretty rapidly for about ten years and then rather slowly and with increasing slowness for at least fifteen years longer, and if there is no improvement in the conditions relating to trade and industry, it will still very slowly increase for twenty-five years beyond that."

I am not convinced that the German plan affords an adequate safeguard against the dangers which Mr. Sherman anticipates, nor am I satisfied that it does not do so. I have, therefore, concluded that the act should not lay down any hard and fast rule as to the amount which shall be raised to provide a reserve fund and that it is better to leave that to be determined by the Board which is to have the collection and administration of the accident fund as experience and further investigations may dictate. I have therefore made provision in the draft bill to that end, by making it "the duty of the Board at all times to maintain the accident fund so that with the reserves it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened." (sec. 70), and by authorizing the Lieutenant-Governor in Council if in his opinion the Board has not performed that duty to require the Board to make a supplementary assessment of such sum as in his opinion is necessary to be added to the fund. (sec. 90), and these provisions I deem essential to the safety and adequacy of the scheme of compensation for which the draft bill provides.

I may here point out that the act of the State of Washington upon which the draft bill submitted by the Canadian Manufacturers Association, to which I shall afterwards refer, is modeled, requires that for every case of injury resulting in death or permanent total disability there shall be set apart out of the accident fund the estimated present value of the monthly payments to which the workman or his dependants are entitled, the total in no case to exceed $4,000.

Mr. Sherman also takes strong grounds against the administration of the act being committed to a Board appointed by the State, his view being that such a Board will be influenced by partisan political considerations in practically all its doings. I have no such fear. Whatever else may be doubtful as to the workings of the act there is no doubt, I think, that the members of the Board appointed by the Crown will impartially and according to the best of their ability discharge the important duties which will devolve upon them in the event of the draft bill becoming law. Whatever may be the experience of other countries the experience of Canada does not justify the view which Mr. Sherman entertains. There are now two Provincial Commissions appointed by the Crown discharging very important duties—the Ontario Railway and Municipal Board and the Hydro-Electric Power Commission—and one appointed by the Governor-General also discharging very important duties—the Railway Commission of Canada. Whatever criticisms there may have been of the action of these Boards, no one, as far as I have heard, has ever charged or even suggested that any member of them has been actuated or influenced by partisan political considerations in any action that has been taken by him and I know of no reason why the Board which is provided for by the draft bill may not be expected to be as free from political partisanship as either of the Boards I have mentioned.

I proceed now to state the general plan upon which the bill has been drafted. The bill is divided into Parts. In Part I the liability of employers to contribute to the accident fund or to pay the compensation individually is dealt with.

The bill does not provide for making all employers liable to pay compensation, but only those in the industries enumerated in schedules 1 and 2, and provision is made for industries enumerated in schedule 2 being added to schedule 1 whenever the Board deems it expedient to add them. Schedule 1 includes all the industries which it is proposed by the draft bill of the Canadian Manufacturers Association to bring within the scope of the act, except those enumerated in schedule 2.

The inclusion of railways in schedule 1 was opposed by the three principal steam railway companies and by some of the other railway companies, and I saw no reason why their wishes should not be met if by meeting them the act would not be rendered less beneficial to the employees and no injustice would be done to the employers in the industries included in the schedule. The draft bill has been framed so as, in my opinion, to work no injustice to anyone and not less beneficially to the employees owing to railways being excluded from the schedule.

The only difference between the operation of the act as to industries in schedule 1 and those in schedule 2 is that employers in the former contribute to the accident fund and in that way pay collectively the compensation, while employers in the latter do not contribute to the accident fund but are liable individually for the compensation payable to their employees. In other respects the operation of the act is the same in both cases. The Board determines the amount of the compensation in both cases and its orders when filed in a County or District Court become orders of the court and may be enforced as judgments of it.

The reasons for adopting the collective system have practically no application to railways, especially when, as has already been done in Ontario and will, I do not doubt, be done when the Parliament of Canada meets, provision is made that all sums payable for compensation shall form part of the working expenditure of the railway company, which is a first charge upon its revenues.

It is manifest, I think, that schedule 1 should not include industries of Municipal Corporations or Commissions, Public Utilities Commissions, Trustees of Police Villages and School Boards, and they have therefore been included in schedule 2.

Schedule 2 also includes the industries of telephone companies and navigation companies. These industries, like those of railway companies, are exceptional in their character, and the reasons for adopting the collective system have no application to them.

In order that additional security may be afforded that the compensation to which employees in the industries in schedule 2 and their dependants may become entitled will be paid, provisions are embodied in the draft bill enabling the Board to require an employer in any industry included in the schedule to commute the weekly or other periodical payments of compensation, (secs. 27 and 28), and also to insure his workmen and keep them insured against accidents in a company approved of by the Board for such sum as the Board may direct.

If it had been practicable to do so without impairing the efficiency of the collective system I should have preferred to include a larger number of industries in schedule 2 in order that with the two systems working side by side experience might demonstrate whether the collective system or that of individual liability was preferable, but I have not been able to satisfy myself that the exclusion from schedule 1 of any considerable number of the industries included in it would not impair the efficiency of the collective system, and I have therefore excluded from it only the industries enumerated in schedule 2. Although but a small number of industries are included in that schedule the operation of the two systems will afford some evidence as to which is the better.

Another reason why it is not expedient to bring these omitted industries within the scope of the act is that by doing so the initial work of the Board would be very greatly augmented and the risk would be run that it would be so overburdened as practically to paralyze its operations. It is, in my opinion, much better that if these industries are to be brought in that should be done later on.

As what I have said has indicated, I have not thought it advisable at the outset to bring within the scope of Part I all employments. The principal industries excluded are the farming, wholesale and retail establishments, and domestic service. There is, I admit, no logical reason why, if any, all should not be included, but I greatly doubt whether the state of public opinion is such as to justify such a comprehensive scheme, and it is probable that when the question of bringing these industries within the scope of the act has to be considered, it will be found that provisions somewhat different from those which are applicable to the industries which it is proposed now to bring within it will be necessary.

I have however made provision for bringing any of these excluded industries within the scope of Part I if and when the Board deems it proper to do so, and its regulation or order bringing them in is approved by the Lieutenant-Governor in Council.

The bill would, in my opinion, fail to do justice to a large body of employees who will not be entitled to compensation under Part I, if it did not provide for a substantial modification of the common law as to the liability of the employer to answer in damages to an employee who is injured owing to the negligence of the employer or his servants.

According to the common law it is a term of the contract of service that the servant takes upon himself the risks incidental to his employment (popularly called the assumption of risk rule), and that this risk includes that of injury at the hands of fellow-servants, (popularly called the doctrine of common employment). The doctrine of common employment is an exception to the general rule that the master is responsible for the acts of his servants when engaged in his work, and has rightly, I think, often been declared unfair and inequitable. The reasoning upon which the exception was justified in the celebrated case of Priestley v Fowler does not commend itself to me as satisfactory, and I doubt whether if the question were to arise now for the first time the same conclusion would be reached. The case was decided at a time when very different views as to the respective rights and duties of employer and employed prevailed than are entertained at the present day, and at a time not far removed from that in which there was upon the Imperial statute book a law which made it a criminal offence punishable with imprisonment for "journeymen manufacturers or others" to agree together for obtaining an advance of the wages of themselves or of any one else, or for lessening or altering their usual hours or time of working.

The unfairness of this doctrine has been recognized by the Imperial Parliament and by the Legislature of this Province in the enactment of employers' liability acts which have modified it but to a very limited extent.

In referring to the legislation of this Province my reference is to the act called the Workmen's Compensation for Injuries Act, which is erroneously so styled, for it is really an employers' liability act.

In my opinion there is no reason why this objectionable doctrine should not, as one of the provisions of Part II of the draft bill provides, be entirely abrogated.

The draft bill also provides for the abrogation of the assumption of risk rule.

The rule is based upon the assumption that the wages which a workman receives include compensation for the risks incidental to his employment which he has to run. That is, in my judgment, a fallacy resting upon the erroneous assumption that the workman is free to work or not to work as he pleases and therefore to fix the wages for which he will work, and that in fixing them he will take into account the risk of being killed or injured which is incidental to the employment in which he engages.

Another rule of the common law is unfair to the workman. Although the employer has been guilty of negligence, if the workman has been guilty of what is called contributory negligence and his injury was occasioned by their joint negligence the employer is not liable. The injustice of this rule consists in this, that though the employer may have been guilty of the grossest negligence, if the workman has been guilty of contributory negligence, however slight it may have been, and his injury was occasioned by the joint negligence, the employer is not liable.

It is proposed by the draft bill to substitute for this rule that of comparative negligence as it is called, and provide that contributory negligence shall not be a bar to recovery by the workman or his dependants but shall be taken into account in the assessment of damages.

That in making these recommendations I am not advancing any novel proposition is shown by the fact that what I propose should be done in this Province has already been done in some of the States of the neighbouring Republic, and that the rules which it is proposed to abrogate or modify no longer meet the requirements of modern industrial conditions and are unjust as applied to the complex relations of master and servant as now existing, and to the use of complicated machinery and the great and dangerous forces of steam and electricity of to-day is the generally accepted view, and was the unanimous opinion of the Employers' Liability and Workmen's Compensation Commission of the United States (Report of Commission, Vol. I, pages 1,213 and 1,214).

Having outlined the provisions of the draft bill I have submitted to Your Honour and stated my reasons for recommending their adoption I proceed to a consideration of those provisions of the draft bill submitted on behalf of the Canadian Manufacturers Association and which, I assume, embodies its views as to the form which a proper compensation law should take, which differ from those of my draft bill, omitting such of the points of difference as I have already discussed.

The compulsory provisions of the draft bill of the Association apply only to industries in which three or more persons are regularly employed, but the option is given to employers in industries in which less than three persons are employed to come under the provisions of the act. The application of the act is not so limited in my draft bill, but provision is made (sec. 73) that the Board may withdraw or exclude from a class industries in which not more than a stated number of workmen are employed, and that an employer in any industry so withdrawn or excluded may nevertheless elect to become a member of the class to which but for the withdrawal or exclusion he would have belonged.

In my opinion it is most undesirable that there should be any such limitation of the application of the act as the Association proposes. As I have already pointed out, it is to industries in which a small number of workmen are employed that the provisions of such an act are peculiarly applicable—as to the small employer, to prevent his being ruined as the result of an accident in his establishment, and as to his workman to insure that he will be compensated if he meets with an accident.

I am very doubtful whether it is desirable to adopt the provisions of section 73 of my draft bill. My object in introducing them was to make easier the work of the Board at the outset, and not with any idea that the power would be exercised except as a temporary expedient to lessen the work of the Board in the early stages of the administration of the act.

The proposition advanced on behalf of the Association in the early stages of my enquiry, that employees should be required to contribute to the accident fund, has apparently been abandoned, as I do not find in its draft bill any provision of that kind. I find in it, however, a provision (sec. 43) that the Board, if satisfied that in any employment the workmen are "desirous of an increase in the scale of compensation and are willing to pay the necessary increase in premiums, may by order sanction any such increased scale and may provide the method of collecting the increase in the premiums from the workmen in such employment."

In my opinion it is not desirable to complicate the act by the introduction of any such provision. It would not, I think, be taken advantage of by workmen, and it is difficult for me to understand exactly what it means. Is it intended that it shall be applicable to a single establishment or only to a class? Are the workmen to be unanimous, or can the power which the section confers be exercised if a majority of them desires an increase in the scale of compensation on the prescribed condition? If the workmen must be unanimous, the section, I have no doubt, will be a dead letter. If it is intended that a majority shall suffice, the provision is, in my judgment, highly objectionable. Sub-section 2 of the section seems to be inconsistent with sub-section 1 or incomplete, in not providing that if the employer pays the increased premium he may deduct it from the wages of the workmen.

The mode in which the assessments are to be collected proposed by the Association differs somewhat from that provided for by my draft bill. The mode which I provide for is, I think, the simpler.

I do not like the term "premium" which is used in the Association's draft bill to designate the rate at which the employer is to be assessed. I prefer the terminology which I have used. What is levied by the Board is not a premium but an assessment.

The draft bill of the Association has but one schedule of industries to all of which the act applies, and it makes no provision for abrogating or modifying the rules of the common law as to employers who are not within the scope of the act. How my draft bill differs from this will be apparent from what I have said in dealing with the general plan upon which it has been drafted.

By my draft bill (sec. 60) the Board is given exclusive jurisdiction as to all matters and questions arising under Part I, and subject to its power to rescind, alter or amend any of its decisions or orders, its action or decision is final and is not subject to appeal.

It is difficult to understand from the Association's draft bill what the jurisdiction of the Board is intended to be. Section 21 provides that the Board shall have jurisdiction to enquire into, hear and determine all matters and questions of fact and law *necessary to be determined in connection with compensation payments and the administration thereof and the collection and management of the funds thereof.*

This language would confer on the Board a rather limited jurisdiction and probably, judging from the provisions of section 22, less than the draftsman intended it should have. The decisions and findings of the Board upon questions of fact are made final and conclusive, but on questions of law an appeal is allowed.

In my opinion it is most undesirable that there should be the appeal for which the draft bill provides. A compensation law should, in my opinion, render it impossible for a wealthy employer to harass an employee by compelling him to litigate his claim in a court of law after he has established it to the satisfaction of a Board such as that which is to be constituted, and which will be probably quite as competent to reach a proper conclusion as to the matters involved, whether of fact or law, as a court of law.

I may point out that section 23, which allows an appeal from the decision of the Board on "questions of law," appears to be inconsistent with section 22, for in the determination of the questions enumerated in that section which are to be deemed questions of fact it may be necessary to decide questions of law, and I confess that I do not quite understand what kind of questions, if those enumerated in section 22 are eliminated, it is intended to make appealable.

In a note to section 22 it is stated that "it is submitted that it would not be wise to entirely shut out appeals and place in the hands of the Board the sole right to interpret the act . . . . . and the right to define its own jurisdiction." What danger is to be apprehended from conferring these rights I do not understand, nor do I see what questions as to the construction of the act are likely to arise other than those enumerated in section 22.

In my judgment the furthest the Legislature should go in allowing the intervention of the courts should be to provide that the Lieutenant-Governor in Council may state a case for the opinion of a Divisional Court of the Appellate Division of the Supreme Court of Ontario, if any question of law of general importance arises and he deems it expedient it should be settled by a decision of a Divisional Court. Although I say this my judgment is against the introduction of any such provision, as it is probable that if any form of appeal to an appellate court is allowed, a defeated litigant will have the right to take his case to the Judicial Committee of His Majesty's Privy Council.

Section 10 of my draft bill, which deals with the case of sub-contractors and is applicable only to industries mentioned in schedule 2, is taken from the British Compensation Act. As the Association's draft bill does not provide for individual liability in any case, no provision corresponding to section 10 is found in it.

Sections 66, 67, and 68 of the Association's draft bill deal with the case of sub-contractors. They are, in my opinion, unnecessary and undesirable.

The draft bill of the Association is made to apply to the Crown. My draft bill is not. Apart from the question of the jurisdiction of a Provincial Legislature to affect the Crown as represented by the Dominion, it is in my opinion inexpedient that the act should apply to the Crown. It would be quite anomalous to group the Crown in respect of road-making, for instance, with other road-makers, and to make assessments upon the Crown as in the case of private persons.

I have no doubt that in case of injury to an employee of the Crown, for which if his employer were a private person he would be entitled to compensation, the Crown would make the like compensation to him and avail itself of the services of the Board for the determination of the amount and nature of the compensation.

The Association's draft bill (sec. 4) disentitles the workman and his dependants to compensation if his injury was, in the opinion of the Board, intentionally caused by the workman, or was due wholly or principally to intoxication or serious and wilful misconduct on the part of the workman. My draft bill provides that compensation shall not be payable where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

The provisions of section 4 of the Association's bill are, in my opinion, objectionable. There is no need for the provision as to intentional injury as an injury purposely caused to himself by a workman is not an accident, and compensation is payable only in cases of accident and industrial diseases. In addition to this the definition of "accident" in the interpretation section of my draft bill (sec. 2) makes this abundantly clear: nor is there any reason for introducing a reference to intoxication, the provision as to serious and wilful misconduct being sufficient to cover any case in which drunkenness ought to bar the right to compensation. Section 4 applies whatever may be the result of the injury. The corresponding provision of my draft bill, following the British Compensation Act, does not apply where the injury results in death or serious disablement.

By my draft bill, following in this respect the British act, industrial diseases are put on the same footing as to the right of compensation as accidents. The Association's bill applies only to accidents. The diseases to which the act is to be made applicable are six in number and are enumerated in schedule 3 to my draft bill, but power is given to the Board by its regulations to add to the schedule. It would, in my opinion, be a blot on the act if a workman who suffers from an industrial disease contracted in the course of his employment is not to be entitled to compensation. The risk of contracting disease is inherent in the occupation he follows and he is practically powerless to guard against it. A workman may to some extent guard against accidents, and it would seem not only illogical but unreasonable to compensate him in the one case and to deny him the right to compensation in the other.

The last point of difference between the two draft bills to which I shall make any detailed reference is that as to the scale of compensation.

The scale of compensation proposed by the Association is in my opinion based upon a wrong principle and will not afford reasonable compensation to the injured workman and his dependants; and indeed I doubt whether, if it were adopted, the workingmen would upon the whole be in a much better position than they would be in without the act, especially if the changes in the common law which I recommend are made.

A just compensation law based upon a division between the employer and the workman of the loss occasioned by industrial accidents ought to provide that the compensation should continue to be paid as long as the disability caused by the accident lasts, and the amount of compensation should have relation to the earning power of the injured workman.

To limit the period during which the compensation is to be paid regardless of the duration of the disability, as is done by the laws of some countries, is, in my opinion, not only inconsistent with the principle upon which a true compensation law is based, but unjust to the injured workman for the reason that if the disability continues beyond the prescribed period he will be left with his impaired earning power or, if he is totally disabled without any earning power at a time when his need of receiving compensation will presumably be greater than at the time he was injured, to become a burden upon his relatives or friends or upon the community.

A uniform rate of compensation which has no relation to the earning power of the workman, except as the Association's bill provides, for the purpose of reducing the rate of 50 per cent. of his wages is, in my opinion, also inconsistent with the principle upon which a just compensation law is based, and unfair, and a most undesirable mode of fixing the amount of compensation.

Not only is the scale of compensation proposed by the Association open to these objections, but the amount of the compensation is so small that only the lowest paid workman would be compensated to the extent of 50 per cent. of the loss of his earning power.

The case of an unmarried locomotive engineer earning $150 a month, not an unusual wage for the engineer of a passenger train, may be taken to illustrate the effect of the Association's proposition. All that he would be entitled to if permanent disability resulted from his injury would be $20 a month, or less than 14 per cent. of the loss of his earning power, except in the rare case of his being rendered completely helpless and requiring constant personal attendance, and in that case his compensation would be double that amount.

There are other provisions which in my judgment are still more objectionable. The limitation to $1,500 of the amount of compensation in case of permanent partial disability is, I think, unreasonable, as is manifest from the illustration just given.

The payment of lump sums is contrary to the principle upon which compensation acts are based and is calculated to defeat one of the main purposes of such laws—the prevention of the injured workman becoming a burden on his relatives or friends or on the community—and has been generally deprecated by judges in working out the provisions of the British act, and was condemned by the Association itself in the memorandum which it submitted, and which appears in the appendix to my first interim report (pp. 67-69).

The proposition that the maximum compensation in case of the loss of a major arm shall be $1,500 besides being open to the objection I have just mentioned would be most unfair in the case of a labourer, to say nothing of the skilled artisan.

A more unjust and, as it appears to me, extraordinary proposition is that contained in clause (c) of section 31, which provides that in the case of temporary disability no compensation shall be payable unless it results "in the diminution of daily earnings to the extent of at least fifty per cent"; and as far as I am aware, and as I should expect, there is no precedent for it in the legislation of any country. As far as I have been able to ascertain, the furthest that any country has gone in that direction is to provide, as do the Washington act (s. 5, clause d) and the law of Norway of July 23rd, 1894, amended by acts of December 23rd, 1899, and June 13th, 1905 (art. 4, par. 2b), that no compensation shall be payable unless the loss of earning exceeds five per cent. In my opinion there is no justification for any such exception even if it is limited as in the Washington and Norway laws.

The scale of compensation which I propose was strongly objected to by the Association as being unfair to the manufacturer, and as imposing upon him a burden that would handicap him in his competition with the manufacturers of the other Provinces and of other countries, and would tend to divert manufacturing from this Province to other Provinces in which less onerous laws are in force. It was also urged that the scale of compensation is higher than that of any other country. The last objection, if a valid one, means that there can be no progress beyond the point which has now been reached by the country which has provided the highest scale of compensation, for if the objection is valid as to the proposed legislation it would be an equally valid objection to any increase in the compensation proposed for the country which now provides for the highest scale. The question, in my opinion, is not what other countries have done, but what does justice demand should be done. I have no fear that if the bill should become law it will handicap the manufacturers of this Province as the Association appears to think that it will, or that it will divert manufacturing from the Province. There has been in force for some years in the adjoining Province of Quebec a compensation law which imposes upon employers greater burdens than they are subjected to by the law of this Province, and yet it has not been suggested that any such results as are prophesied by the Association have followed from the enactment of the Quebec law.

In order that it may be seen whether the division of the burden between the employer and workman is unfair, it may be well to point out how it will be divided under the provisions of the proposed law. The workman will bear (1) the loss of all his wages for seven days if his disability does not last longer than that, (2) the pain and suffering consequent upon his injury, (3) his outlay for medical or surgical treatment, nursing and other necessaries, (4) the loss of 45 per cent. of his wages while his disability lasts; and if his injury results in his being maimed or disfigured he must go through life bearing that burden also, while all that the employer will bear will be the payment of 55 per cent. of the injured workman's wages while the disability lasts.

The burden which the workman is required to bear he cannot shift upon the shoulders of any one else, but the employer may and no doubt will shift his burden upon the shoulders of the community, or if he has any difficulty in doing that will by reducing the wages of his workmen compel them to bear part of it.

It is contended that it is unfair to require the employer to pay compensation during the lifetime of the workman because in many cases it will mean that the workman will receive compensation for a period during which if he had not been injured he would have been unable to earn wages. No doubt that will be the result in some cases, but on the other hand the workman loses any advantage he would have derived had he not been injured from an increase in his wages owing to an improvement in his position, or to an increase of his earning power, or to a rise in wages from any other cause because, except in the one case of a workman who is under the age of twenty-one years when injured, the compensation is based on the wages the workman was earning at the time of his injury.

It must also be borne in mind that the workman is required, as the price of the compensation he is to receive, to surrender his right to damages under the common law, if his injury happens under circumstances entitling him by the common law to recover or, if he would be entitled to recover only under the Workmen's Compensation for Injuries Act, his right to the like damages as he would be entitled to at common law limited, however, to an amount not exceeding three years' wages or $1,500, whichever is the larger sum.

According to the testimony of Mr. Wolfe (page 141), and there is no reason to doubt the accuracy of his statement, in Germany no less than 84 per cent. of the accidents incapacitate the workmen for less than fourteen weeks.

The nineteenth report of the Minister of Labour of France shows that the number of declared accidents in that country in the year 1910, after deducting those which occasioned an incapacity of four days or less, and omitting those which happened in mines, mining and quarries, was 412,278, and that of these 1,650, or a little more than one third of one per cent., were fatal; 5,452, or about one and one third per cent., resulted in permanent disability, and 399,769, or about 97 per cent., resulted in temporary incapacity lasting for more than four days, and that in the remaining 5,407 cases, or about one and one third per cent., the results of the accidents were unknown.

In Great Britain the duration of disability in the cases terminating in 1908 was as follows:

Less than two weeks	11.2 per cent.
From two to three weeks	27.3 per cent.
From three to four weeks	18.4 per cent.
From four to thirteen weeks	37.7 per cent.
From thirteen to twenty-six weeks	4.1 per cent.
Over twenty-six weeks	1.3 per cent.

(24th Annual Report of the United States Commissioner of Labour, Vol. II. pp. 1,525-6).

Similar statistics for Ontario are not available, but it may, I think, fairly be assumed that the great bulk of the accidents for which compensation would be payable under the proposed law will incapacitate the workman for short periods—84 per cent. probably for less than fourteen weeks—and that the fatal accidents and those causing permanent disability, total and partial, will be comparatively few. If this assumption is warranted there would appear to be not only no reasonable ground for the apprehension of the Association that the employers will be unduly burdened with payments for compensation continuing during the lives of permanently injured workmen, but it is certain that under the proposed law as to the vast majority of accidents in every case in which there could be recovery at common law or under the Workmen's Compensation for Injuries Act, the workman will be worse off than he is at present, and his loss will be a direct gain to the employer, amounting annually to a very large sum.

My conclusion is that for all these reasons there is no valid ground for the objections of the Association to the scale of compensation which I have proposed.

I have, however, upon further consideration come to the conclusion that as the purpose of the proposed law is to protect the wage earner there is no reason why highly paid managers and superintendents of establishments, to which Part I is applicable, should be entitled to compensation out of the accident fund to an amount greater than the highest paid wage earner would be entitled to receive, and I therefore recommend that the draft bill be amended by adding the following to sub-section 1 of section 39:

"But not so as to exceed in any case the rate of $3,000 per annum."

If no such limit is prescribed the result would be that the small employer, in the case of an accident happening in another establishment to a highly paid official, would be unduly burdened. I propose $3,000 as the limit because that sum is probably the maximum amount earned in a year by the highest paid wage earner.

The only remaining provision of the draft bill to which I shall refer is section 68, which provides for a contribution by the Province to assist in defraying the expenses incurred in the administration of the act. I have not ventured to suggest what this contribution should be but, in my judgment, it should be a substantial one. The effect of the proposed law will be to relieve the community from the burden of maintaining injured workmen and their dependants in cases in which under the operation of the existing law they are without remedy, and by the transfer from the courts to the Board of the determination of claims for compensation, which will lessen very much the cost of the administration of justice.

There is one matter which should be provided for for which provision has not been made in my draft bill. No provision is made for contribution by employers in the industries mentioned in schedule 2 towards defraying the cost of administration. This was an oversight, and I recommend that a section be added to the bill providing that "the employers in industries for the time being embraced in schedule 2 shall pay the Board such proportion of the expenses of the Board in the administration of this part as the Board may deem just and determine, and the sum payable by them shall be apportioned between such employers and assessed and levied upon them in like manner as in the case of assessments for contributions to the accident fund, and all the provisions of this part as to assessments shall apply *mutatis mutandis* to assessments made under the authority of this section."

It is the purpose of my draft bill to empower the Board in determining the proportions of the contributions to be made to the accident fund by employers to have regard to the hazard of each industry, and to fix the proportions of the assessments to be borne by the employer accordingly, and not to require that the proportions for each class or sub-class should be uniform; and also to permit the Board, if in its opinion the character of any class of industry justifies that being done, to require a larger contribution to the reserve fund by the employers in any such class than is required from employers in other classes.

The bill as drafted will, I think, accomplish this purpose, but if any doubt is entertained as to it, the bill can be amended by the addition of a section expressly so declaring.

I may be permitted to say, in conclusion, as the United States Commissioners said with reference to the bill drafted by them, that I submit the proposed law "not believing that it is the most perfect measure which could be devised nor the last word which can be said upon the subject, but as the result of careful investigation and the best thought of the Commission and as constituting at least a step in the direction of a just, reasonable, and practicable solution of the problem with which it deals."

I regret that some of its provisions do not commend themselves to the judgment of the Canadian Manufacturers Association, and on that account I have, since my last interim report, again carefully and anxiously considered those which are objected to and the objections that are urged against them, as well as the provisions of the Association's alternative proposition, but have seen no reason for doubting the correctness of the conclusion to which I had come, the results of which are embodied in the draft bill.

In these days of social and industrial unrest it is, in my judgment, of the gravest importance to the community that every proved injustice to any section or class resulting from bad or unfair laws should be promptly removed by the enactment of remedial legislation and I do not doubt that the country whose Legislature is quick to discern and prompt to remove injustice will enjoy, and that deservedly, the blessing of industrial peace and freedom from social unrest. Half measures which mitigate but do not remove injustice are, in my judgment, to be avoided. That the existing law inflicts injustice on the workingman is admitted by all. From that injustice he has long suffered, and it would, in my judgment, be the gravest mistake if questions as to the scope and character of the proposed remedial legislation were to be determined, not by a consideration of what is just to the workingman, but of what is the least he can be put off with; or if the Legislature were to be deterred from passing a law designed to do full justice owing to groundless fears that disaster to the industries of the Province would follow from the enactment of it.

All of which is respectfully submitted.

W. R. MEREDITH,
Commissioner.

Dated at Osgoode Hall, Toronto,
the 31st day of October, 1913.

APPENDIX "G"

REPORT OF THE

HONOURABLE MR. JUSTICE ROACH

Report on

The Workmen's Compensation Act

ONTARIO

Report of the Honourable Mr. Justice Roach, Commissioner appointed to inquire into and report upon, and to make recommendations regarding The Workmen's Compensation Act upon subjects other than detail administration. —— May 31, 1950.

TORONTO
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1950

MERIT RATING

This subject relates only to the industries in Schedule 1.

Presently the Board fixes a uniform rate which is applicable to the industries in each class or in the groups into which a class may be divided. That rate depends upon the accident experience of the industries within the class or groups. No distinction is made between the employers in a class or group who have a favourable accident record and those who have not.

It was vigorously urged before me by some of those representing industry that the present method of assessment is unfair because the employer who has a favourable accident record is, in effect, punished by the bad accident record of other employers in the same class or group. To remove this alleged injustice those representatives recommended that some fair and equitable merit-rating system should be adopted. No specific plan of merit rating was brought forward by them.

Those representing other industries just as vigorously opposed all merit-rating systems and all those representing labour also opposed it.

The Act provides as follows:

> 98.—(2) It shall not be necessary that the assessment upon the employers in a class or sub-class shall be uniform, but they may be fixed or graded in relation to the hazard of each or of any of the industries included in the class or sub-class.
>
> (3) A system of merit rating may, if deemed proper, be adopted.
>
> 84.—(4) Where a greater number of accidents has happened in any industry than in the opinion of the Board ought to have happened if proper precautions had been taken for the prevention of accidents in it, or where in the opinion of the Board the ways, works, machinery or appliances in any industry are defective, inadequate or insufficient the Board may so long as such condition in its opinion continues to exist add to the amount of any contribution to the accident fund for which an employer is liable in respect of such industry such a percentage thereof as the Board may deem just and may assess and levy the same upon such employer, or the Board may exclude such industry from the class in which it is included, and if it is so excluded the employer shall be individually liable to pay the compensation to which any of his workmen or their dependants may thereafter become entitled and such industry shall be included in Schedule 2.
>
> (5) Any additional percentage levied and collected under subsection 4 shall be added to the accident fund or applied in reduction of the assessment upon the other employers in the class or sub-class to which the employer from whom it is collected belongs as the Board may determine.
>
> (6) Where in the opinion of the Board, the ways, works, machinery and appliances in any industry conform to modern standards in such manner as to reduce the hazard of accidents to a minimum and the Board is convinced that all proper precautions are being taken by the employer

> for the prevention of accidents, and where the accident record of the employer has in fact been consistently good, the Board may reduce the amount of any contribution to the accident fund for which such employer is liable.

The Board advises me that over the years this subject has been contentious and vexatious. Employers have complained that assessments levied upon them have in some instances greatly exceeded the total accident cost in their industry in a year or a period of years. No employer, of course, has complained where the accident cost in his industry has exceeded his assessments. That was not to be expected.

No new arguments were advanced before me either by those proposing a merit-rating system or those opposing it. The Board advises me that they are the same as from time to time have been submitted to it. They are as follows:

Those in favour:

1. Employers with a low accident cost should benefit thereby and for that purpose be given a preferential rate.
2. Employers not employing or enforcing safety measures should be penalized by not getting a preferential rate.
3. It would be conducive to accident prevention because the assessment would bear a closer relation to individual accident cost.

Those opposing:

1. Any such system would destroy the collective liability system of the Act.
2. If assessments were to be fixed by reference to accident experience employers, with a view to reducing their assessments, would not report accidents.
3. It is unfair to take the accident cost as the only factor in determining rates. Many other factors enter into it.
4. It would unjustly penalize the employer whose accident cost was high through no fault or neglect on his part.

If this question were being raised before me for the first time I should have thought, perhaps rashly, that without destroying the collective liability feature of the Act, some system of merit rating could be devised that would be fair and equitable and workable. The Board, however, informs me that over the years various systems have been proposed and tested and that none of them have been satisfactory.

The Act as originally passed did not provide for any merit-rating system. What is now section 98 (3) was added to the Act in 1917. The experience of the Board over the years has been as follows:

From 1917 to 1920 inclusive a merit-rating system was applied *yearly*, that is to say, it applied in one year based on the accident experience of the previous year. This was unsatisfactory.

In October 1922, the Board concluded that one year's accident experience was an unfair basis, and it decided to apply it on the accident experience over a three-year period. The plan provided for a refund for favourable accident experience and the imposition of an additional assessment for a bad one. That system was applied in October 1924 on the accident experience of the years 1921, 1922 and 1923.

That system was varied for the three-year period 1924, 1925 and 1926 by eliminating the penalty or demerit feature, and, instead of making refunds, making deductions from the assessments.

In each of the years 1929 to 1932 inclusive, a merit-rating system consisting of such deductions, and based on the accident experience in the first three of the immediately preceding four years, was applied.

In 1932, due to dissatisfaction expressed by employers, the merit-rating system was discontinued and in that year the Legislature amended the Act by deleting what was then section 93 (3). That deleted section, however, was restored to the Act in 1933 and is now section 96 (3).

In 1934, merit rating was again applied to two three-year periods, viz., 1929-30-31 and 1930-31-32, by deduction from the 1934 assessment.

In 1935, merit rating was applied to the years 1931, 1932 and 1933 by deduction from the 1935 assessment.

In 1936 merit rating was again discontinued. In each of the years 1937 and 1938 a preferential system was applied, but it was abandoned in May 1938, and since then no merit-rating system has been in effect.

Under the last such plan, that known as differential (preferred) rating, for the years 1936 and 1937 over 6,016 employers were penalized, it being estimated that the total penalties for those years amounted to approximately $1,466,437.53. In classes 1, 2, 3 and 4, by actual check, the penalties applied for the year 1936 amounted to $128,072.06 and for 1937 to $191,925.58. It was estimated that over 55 per cent of the firms penalized in the two years had a favourable *lifetime* experience with the Board, that is, the total assessment paid by each employer exceeded his total accident cost. However, other employers who were in the "red" over their lifetime experience with the Board escaped any penalty under this merit-rating plan on account of having a favourable accident experience in the years 1936 and 1937. The differential (preferred) rating plan was the cause of much irritation to the employers and loss of goodwill to the Board. It is estimated that complaints from one thousand employers or more were received, and also from different employers' associations. It was felt that the penalizing feature of the plan was a persuasive factor in inducing employers to avoid "poor risks", that is, to discriminate, between workmen, favouring those who, under certain circumstances, would have a lower accident cost in the event of an accident than others.

The discussions before me terminated on a tranquil note. Those in favour of a merit-rating system stated that presently they had experts studying the problem, and that they were hopeful that a system which would be fair and equitable and workable and not weaken the collective liability feature of the Act would be devised. The Board stated it would be willing to study any specific system that might be submitted to it, and, if convinced that it was all that those favouring it hoped it would be, to try it.

I leave the matter where those advocating the adoption of some such plan are content it should presently be left. The dangers involved in the adoption of a system of merit rating are realized by those espousing it, as well as by those opposing it, and also by the Board. Those dangers are fittingly referred to by Mr. Justice Middleton in his report, thus:

> Great care would have to be taken in the application of any such merit-rating system because the whole principle of collective liability is based upon the doctrine of average. It is not enough that for a year, or even a short series of years, a particular factory escapes having any serious accident. The whole principle is that the fortunate must bear some portion of the burden of the unfortunate. This is illustrated in fire insurance. The rate is fixed having regard to experience, but no householder ever expects to receive fire insurance at a reduced premium simply because he has carried insurance for so many years and never had a fire.

Anything further that I might say with respect to those dangers would only be a repetition of what he so well said.

APPENDIX "H"

REFERENCED WRITTEN POLICIES

OF THE

WORKERS' COMPENSATION BOARD

POLICY: Registration of Employers

- Any employer engaged in an industry within the scope of the Act, unless excluded by regulation, is required to register with this Board. Registration basically requires the completion of an Employers Payroll Statement by the employer.
  Information sources used to determine the requirements of employers within the Province, include the following:

  i) Current active employer files
  ii) Inactive employer files
  iii) Royal Gazette (new employers)
  iv) Industry and Trade publications
  v) Industry association(s) membership lists, etc.
  vi) Daily newspapers - advertisements, etc.
  vii) Review of all claims and medical aid documentation filed with the Board, to ensure registration of claimants' employer.
  viii) Information obtained during field audits.
  ix) Any other reliable source

- A potential employer or known employer is notified in writing of his requirements under the Act. Every two weeks a reminder is sent until the employer notifies the Assessment Department of his status. If, after three written notices/reminders, there still has been no reply from the "employer", an attempt will be made to contact them by telephone. If this effort still proves unsuccessful the next step would be:

  i) Arbitrarily assess the employer, if he is known for sure to be an employer within the scope of the Act.
  ii) Assume that the person(s) are not employers and discontinue correspondence, but maintaining on file all previous correspondence for possible use in the future.

- The registration process is expedited considerably, when the Board is in receipt of claims from workers of an unregistered employer.

(Please see over for correspondence examples)

- Registration for employers engaged in certain industries which are excluded by regulation from the application of the Act (namely farming & fishing) is by application each year. Given the "optional" status of these employers, their applications are subject to refusal and their coverage subject to cancellation under certain circumstances i.e. (delinquency in registration and or payment of assessment).

  If an employer engaged in an optional industry, in regards to coverage, registers with the Board, all his workers must be covered, i.e. (all wages reported).

POLICY: Classification (See Section 55 of Act)

- All employers who are required to be registered with the Board are classified into established industrial groups for assessment purposes.

- Classifications are on the basis of industrial undertaking and not on the basis of the occupation of workers.

- An industrial classification therefore, includes all occupations within the industry, including office or clerical staff.

- A separate classification is not warranted if the operation or activity is incidental or supportive of the employers main industry.

- Incidental or supportive is where an operation exists to service the prime industry of the employer.

- Separate classification (s) for an individual employer are warranted if he has operation(s) which are distinctly different/separate from one another, i.e. (separate branch, separate staff, etc.)

- When a worker, while working for the same employer, divides his time between separate industries, his earnings may be included under the more hazardous industry or may be split on a percentage of activity basis, for assessment purposes. In this case, a separate industry grouping would only be warranted if the second type of work is significant in regards to time devoted to it. Again, tasks performed which are incidental to the main operation do not warrant separate classification.

- The dividing of individual worker earnings among two or more classifications is not common and not encouraged, as there is no realistic manner in which the situation can be monitored by the Board.

- An employer may have his operations reclassified for assessment purposes if it appears the nature of the work has changed significantly. The Assessment Department will make the majority of such decisions, with contentious classification requests handled by the Executive Director and/or ultimately at the Board level.

- All new employers are classified into established industrial groups entailing work of a similar nature.

10

POLICY: Employers Coverage - General

Employers coverage applies to all employers, partners, executive officers and directors of an enterprise. In essence, an employer is covered as if he were a worker, in regards to compensation benefits under the Act.

Employers coverage must be specifically requested for each individual and is in no way assumed on our part. Coverage is based on the calendar year and assessed accordingly.

11

POLICY: Employer's Coverage - Pro-rate Assessment

Employer's coverage is based on one ful year (365 days) and is only effective from the date it is requested to December 31st. Therefore, the first time it is in effect for an individual, it would normally be pro-rated for assessment purposes as follows:

$$\text{requested coverage} \quad X \quad \frac{\text{days left in year from effective date}}{365} = {}^{*}\ \text{Assessable Amount of Coverage}$$

* Minimum $5,000

Employers coverage is also pro-rated for assessment purposes, when it is cancelled during the year, with the minimum level ignored in these cases. If the coverage is desired again, during the same year, after it has already been cancelled once, no more pro-rating is calculated on that coverage. i.e. Pro-rating of coverage for assessment purposes is done only once when coverage is cancelled and re-opened during the same calendar year.

13

POLICY: Clearances/Letters of Good Standing

A Clearance or Letter of Good Standing, from the Worker's Compensation Board of P.E.I., may be issued for an employer following a review of the account. The request for a clearance may come from the employer directly or from a third party:

i) Principal who is contracting with the employer and could be liable for the assessments on the relevant wages.
ii) Their lawyer, possibly representing a financial institution taking security on employer assets or involved in the sale of the employer's business/assets.

Technically, any employer account, having a balance owing beyond 30 days of the original billing date, is overdue and not in good standing as such, but when issuing clearances this point is not strictly adhered to, as other factors, such as the payment history of the employer are taken into consideration when deciding whether to issue the Letter of Good Standing or not.

Employers who have made arrangements to defer payment of their assessment on a weekly, monthly, quarterly or semi-annual basis and are meeting their agreed upon payment schedule, will be considered to be in "good standing" with the Board, as long as they continue to follow the agreed upon payment schedule throughout the year.

18

POLICY : Collections

The following is done on a monthly basis:

i) Review list of Aged Accounts Receivables to determine which accounts have established payment terms, i.e. post-dated cheques, etc. Concentration, obviously, will be placed on accounts with older balances.

ii) Telephone all employers with outstanding accounts over 60 days and note any agreed upon payment terms or promises of payment.

iii) All employers who have not made an effort to pay within 30 days of inital telephone call, should be visited and penalties (judgement procedures) explained.

iv) If payment agreement is not reached or promise of payment received from employer by a certain date (to be determined at initial visit), judgement procedures "should" begin immediately.

v) Any employer with whom a payment agreement has been reached or a promise of payment received, should be contacted immediately if agreements are not adhered to and given 30 days before judgement procedures are started.

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ARTHUR J. MACDONALD
CHAIRMAN

ARTHUR HOWARD
VICE CHAIRMAN

ARTHUR BROWN
COMMISSIONER

The Worker's Compensation Board
PRINCE EDWARD ISLAND

Dear Sir:

Please find enclosed an arbitrary assessment notice, placed on your business . This assessment is as per Section 66(9) of The Worker's Compensation Act.

We have placed this arbitrary assessment on your 1989 payroll, as we have tried on numerous occasions to have you register with The Worker's Compensation Board.

To date, your voluntary registration has not been forthcoming and we therefore haven't any alternative but to proceed with the above stated action.

If you have any concerns regarding this action, please do not hesitate to contact me.

Yours truly,

Greg McCallum

G. Greg MacCallum
Chief Assessment Officer

GMC/tj
encls.

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POLICY: Levying of Service Charges

As allowed for by Section 67 (1) of the Act, any assessment which is not paid when it becomes payable, is subject to a penalty, calculated as a percentage of the unpaid balance owing to the Board. This penalty (service charge) may not exceed 18% of such assessment and is treated the same as a regular assessment in regards to collectibility from the employer.

Currently, in practice, our payment terms which are clearly stated on the employers assessment notice, allow for payment of the total balance due on the notice within 30 days of the date of notice, after which interest (service charges) will be charged at the rate of 18% per annum or 1½ % per month on any overdue portion of any assessment/balance owing.

Any service charges calculated on an arbitrary assessment will not be waived following revision of such assessment. It is the employers responsibility to voluntarily provide the Board with provisional payroll information and ensure the assessment is realistic in the circumstances.

POLICY: **Late Filing Penalties**

A late filing penalty in the amount of $50.00 is levied against employers who fail to submit their payroll statement by March 31 each year. Higher penalties are allowed for in the regulations, but $50.00 is the maxiumum levied to this point, for delinquency in filing an employers payroll statement.

There is some special consideration given to seasonal employers, unless there is a large adjustment owing to the Board when the previous years' payroll information is processed, e.g. (Previous years estimate less than 75% of actual payroll reported). In these cases, the penalty could also be viewed as an underestimating penalty as allowed for under Section 61 of the Act.

Employers with minimal payrolls i.e. (minimum assessments) are also given special consideration when penalties are levied.

All employers who are delinquent in their registration are given notice of their delinquency as of February 28th and told their account may be subject to a late filing penalty, if we are not in receipt of their current year registration by March 31st.

Please see over for copy of notice.

26

FOLICY: Minimum Annual Assessments

The minimum annual assessment levied on employers with even minimal payroll is $25, if a resident and $50. if a non-resident.

Minimum assessments will also be levied on employer accounts when they report having paid nil wages in the previous year, on their current years payroll statement i.e. (administration charge of maintaining their account as active).

If a single employer has multiple accounts and one of these reports no payroll for the previous year, there isn't any minimum assessment levied in this case.

Minimum assessments can also be levied at the discretion of the Assessment Department throughout the year for the current year's activities, even if no wages were paid. (Again, an administration charge if an employer account was set up).

28

POLICY: Close-Outs

When a registered employer is no longer required to be registered with The Board, their account is designated as being inactive i.e. (closed out). This uld be for one of the following reasons:

i) No longer have employees
ii) No longer in business
iii) Sold business
iv) Engaged in an "optional" industry, (farming/fishing)
v) Independent operator/employer coverage only

The employer will usually inform the Board directly if one of the above exist, except in cases (iv) & (v) where the Assessment Department will close-out these types of accounts if they are delinquent in their registration as of May 1, each year. (See over for examples of correspondence).

When an employers account is "closed-out", they are notified by certified mail of such,so as to ensure they are aware of their status with the Board.

29

POLICY: Overpaymebts

IF an overpayment occurs the claimant is to be advised immediately and return to overpayment requested.

If the worker has returned to work with the injury employer and he makes no response to return the overpayment, then the employer will be asked to deduct the payment from the claimants pay.

If the worker ignores the request and returns to work elsewhere or is unable to be contacted then his name and overpayment will be maintained on a secretaries desk where the new claims are checked and the overpayment is deducted the next time a claim is filed.

ok. - TL

33

OVERPAYMENTS:

If overpayments occurr to a treating facility or a doctor or drug store, etc., they will be notified of the overpayment and request made for return of same. If no action it is to be deducted from the amount owing to that facility or person on their monthly cheque, if no action the Finance Department can pass in for collection through our legal department.

34

POLICY AND PROCEDURE

It has always been the policy of the Worker's Compensation Board that medications such as Halcion, Ativan and Elavil are very short term medications and are only paid during acute stages of disability in any file. Henceforth, any medications received in this type of league will not be covered for indefinite periods of time and will only be covered after medical assessment has been received which states that this is an acute stage of pain and for the duration of how long it is expected to be used. When this type of medication is received, please put the prescriptions in the file, pin them to the front of the file so they come to the attention of the Medical Officer during the case reviews.

36

POLICY

On the drugs Fiorinal, Atasol and Tylenol #3, these prescriptions will be paid for on the long term basis. They are the same as heavy pain medications. Of the numbers being used, will be monitored very closely, and after a period of 6 months, it will brought to the attention of the attending physician and specialist, if they are still being used to quota.

These prescriptions can be habit forming and this is what we must look for, yet they are required in certain types of pain cases.

37

POLICY: Phonecalls

All longdistant phone calls will be accepted.

If someone calls longdistance and does not reverse charges the caller is to be advised to hang up and call back or take his number and return the call so that charges are carried by the Board.

If a worker calls his physician or any other medical facility and it appears as a long distant charge on their bills their bill is to be reimbursed and they are to be advised that in future they are to call this office and the Board Staff will make the inquiries necessary on the case. The file is updated on the information and then relayed to the worker.

o.k. T9

38

POLICY: HANDBOOKES:

To all new employers a packet giving samples of work materials i.e., reports required for registration, reporting of accidents etc., will be forwarded along with handbooks outlining benefits to workers and employers responsibilities.

Booklets to Government or deposit agencies will be charged a book fee of 3.00 each.

Injured workers receive info. on benfits free when they file their claim.

Injury Employer receives info book when claim is filed.

o.k. T.D

39

HOMECARE POLICY

The Board policy is that if a person can be returned to his home environment and this is in the mental and physical health interests of the worker and his family, then it shall be done.

Home renovations will be addressed asneeded, i.e. structural etc.

Attendants will be considered on the basis of the physical and mental needs of the injured worker.

Family Members acting as attendants will be paid a monthly allowance to be set by the Board on considerations of type of care and any loss of income from outside employment given up by the family member. Family Members are to be screened as opposed to outside persons being beneficial in homecare due to the family members required to live with the injured person

Non family members will be reimbursed after consideration of care being required. (bedridden to guidance care) in comparison with government and private rates for like services.

The injured workers homebudget can be supplemented with a stipend for meals allowed for the homecare person.

Homecare needs, i.e. diapers, safety handgripes for tubs, special chairs, hospital beds, etc., will be considered upon request or attention of the Pension Officer, considering need and disability involved.

Quality life at home will be considerd on per request only and shall be covered as deemed necessary and human by the Board. i.e. VCR for paraplegics, etc.

Clothing worn out due to prothestias etc., will be considered for annual allowance upon request and medically supported needs.

Any other requests brought to the attnetion of the Board by injured workers, family members or pension officer will be consdered on their merits.

Homecare will only be maintained while injured worker is at home, if institutionalized homecare will be in most cases suspended, only in cases where the injured might returned home in a short period of time will an attendant be maintained on allowance.

Travel requirements will be reviewed as needed and a realistic allowance allowed in each request where warranted in the opinon of the Board.

The above will be implemented by the Board or its appointed officer, Ex. Director, where needed.

40

ok.

ARTHUR J. MACDONALD
CHAIRMAN

ARTHUR HOWARD
VICE CHAIRMAN

ARTHUR BROWN
COMMISSIONER

The Worker's Compensation Board
PRINCE EDWARD ISLAND

MEMORANDUM

DATE: March 17, 1989

RE: Policy on Physiotherapy Treatment

FROM: Worker's Compensation Board

The Worker's Compensation Board developed a policy at their meeting of March 13, 1989, that Physiotherapy will be reviewed at the end of 21 visits. The success, expected results and continuation will be decided upon at that point in time. Each case will be judged on its individual merits, the medical reports and the comments of the Physiotherapists who keep the Board updated on the progress of their patients. This does not mean an automatic cut off, but rather a review, expected results and success of continued Physiotherapy care.

This policy will go into effect as of May 1st, 1989; by that time a review of the Board's present claimant records will have been completed and further direction will be given on individual cases.

Thank you for your co-operation and participation in our claims care and if you have any questions or comments, please do not hesitate to contact the undersigned or write to the Worker's Compensation Board.

Yours truly,

Elaine MacEachern

Elaine MacEachern
Adm Asst.

EME/nmh

45

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1

POLICY: GLASSES

If glasses are broken while on the face of the worker or struck from the face of the worker through the course of his employment, the glasses will be replaced at the cost of previous glasses if special considerations were paid for by the worker when the initial glasses were ordered, or at a rate not to exceed 90.00 for the lenses
130.00 for the frames.

The rate noted above will also be applied to glasses issued for those claims where the need for glasses has occurred and will be maintained at one pair per year not to exceed the rate as noted in this policy, solely from a work injury to the eyes.

Broken frames or lenses do not require a medical aid claim, i.e. the need of seeing a physician, unless a new prescription is required for the lenses the claimant can then be seen by an Optomitrist.

Special considerations i.e. bifocal, etc., can be considered for extra costs.

o.k.

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THE WORKERS COMPENSATION BOARD
OF
PRINCE EDWARD ISLAND

POLICY NO.	EFFECTIVE DATE
DISTRIBUTION:	SUBJECT
CERTIFIED BY EX. DIRECTOR:	BOARD MINUTE DATE:

In order for glasses to be paid for by this Board when broken at work, the glasses must be broken through a direct blow to the face resulting the glasses being broken on the face or thrown from the face.

47

POLICY ON BRACES AND PROSTHETICS

This is outlined in the Act as far as authority for issuing and supply such needs.

For cosmetic purposes a dress hand or other prosthetic can be considered on a case to case requirement.

Type of pros., will be outlined by the demand and type being required by the medical disablement and rehab program or work program being pursued by the injured worker.

* Clothing allowance may be considered by the Board.
(this policy point appears also in the homecare coverage).

o.k. TD.

POLICY 1984

In cases where the worker is on UIC and a work project for 2 - 3 days each, compensation is to be paid on the * combination of the two not to exceed, 75% of 1~~7,000.~~00 MAXIMUM FOR th

If you are unble to determine these cases, ask the workers to give more detail.

In those cases where UIC does not apply and the work is on a regular but only 2 - 3 days a week benefits are on the actual earnings (if 6 weeks or more for record)

If a worker has just commenced employment then Section 46 (2) can be used.

see note.*

55

April 26, 1988

BOARD POLICY

In cases where witnesses are reported to the Workers' Compensation Board either on the initial reports to this office or subsequent statements, the witnesses are to be contacted by W.C.B. staff. Worker and Employer are not to be advised to contact witnesses. If statements are supplied from witnesses by either employer or employee, the statements will agian be confirmed by Board staff. This is to ensure that no pressure is brought to bear on the stated person. This of course does not include the injured worker or employer from obtaining the statement, but to be totally impartial, the Board must make its own investigations.

oK. TU.

56

BOARD POLICY RE: STRESS

Stress after trauma is accepted as a compensable condition. Stress itself is not accepted as a compensable injury or disease.

BOARD POLICY RE: HYPERTENSION

Hypertension itself is not compensable, but, increased physical activity, exceeding that of an ordinary work day causing an anxiety/exhaustion attack is compensable if proof is provided supporting such increase in exertion. Compensable only for the period of recovery.

BOARD POLICY RE: STROKE

Hypertension itself is not compensable. If an increase in labour exertion is proven immediately prior to the onset of a stroke at work, the stroke and its disability is accepted as arising out of employment. This compensable in as long as the disability from the stroke lasts. Medications are provided only during the period of disability and only for medical treatment of the stroke and its side effects.

Board Order May 19,1987

57

Policy of the Workers Compensation Board in Allergic Reaction - Dermatitis Cases is that the first incident is accepted at the Claims Department Level on the basis of supportive evidence. After the first flare up settles down, the claimant uses precautionary measures e.g. cotton gloves inside rubber gloves, barrier cream, etc., to avoid the irritant.

The second case is also accepted at the claims level, but after it settles down, the claimant must adjust his/her work patterns and/or work areas to avoid the irritant.

A third case will be accepted at the claims level with the understanding on the part of the claimant that thereafter the worker must remove him or herself from the area and/or irritant, this could mean a change of employment, this change is the workers responsibility. Subsequent claims are only accepted at the Workers Compensation Board level and can be denied if the workers has not taken the aforementioned steps to avoid the irritant.

ok. TD.

58

REHAB:

POLICY _ EDUCATION

Programs for retraining or rehabilitation, their types, costs etc., will be dealt with at the Board level, the programs for counsllor guidance will not exceed two years duration on benefits and will not include University Attendance other than course costs on a limited basis.

PROCEDURE

INVESTIGATIONS

The staff member responsible for this duty will collect information first hand to ensure no durest in statements provided to the Board.

60

PRACTICE:

There will be a case review committee between Rehab/Claims/Pension and Administration to plot case handling and interaction with the noted divisions and the injured worker to ensure the efficient/quality service to the claimant and his or her family.

61

PROCEDURE - POLICY

1. A decision to deny action can be made at the department officers level.

2. Review is made with the claimant or other person of the records and reasons for the denial of service.

3. Appeal is made to the Executive Director for his consideration and reivew of records and new information.

4. Review can again be conducted with the appellant if requested and necessary.

5. last level of appeal is to the Board itself and is made in writing with written information to support the appeal then and if requested an appearance can be arranged with the Board.

62

APPEAL PROCEDURE

1. Denial of Claim or Request pf some service from the Board. This could be Claim, Rehab, Assessment, Etc.

2. Reason for denial must be clearly spelled out in letter

3. Letter outlining how to appeal must be included with letter of denial.

4. Step 2, the receiver of the denial wants to appeal. They are referred to Elaine MacEachern for review of the information on the files. Consultation between the department head making the denial and Mrs. MacEachern must take place before the appointment time of review.

5. Mrs. MacEachern will do the review and counsell the worker or appellant on the next step which is a written statement to Mr. Ready plus any written supportive proof to the reason for appeal.

6. Mr. Ready may accept the appeal and overturn the decision or he may deny the request. Again the decision will be in writing.

7. Mr. Ready may referr the case to the Board.

8. The Appellant still has a right to appeal directly to the Board. Again in writing first, if an appearance is requested or necessary it will be dealt with at the Board Level. No appointments are to be made prior to Board Consideration of such requests.

63

POLICY: FEES FOR SERVICES.

CHIROPRACTORS: These fees and preambles will be negotiated with a representative of this group, the Ex. Director and the Chairman with the final approval of the Board. Specific times types of care, numbers of visit, etc will be covered in the preambles.

MEDICAL PRACTIONERS: These fees and preambles will benegotiated with the presentative of the group, the Ex. Director and the Chairman, with the final approval from the board. Specific times types of care, numbers of visits, etc., will be covered in the preambles.

HOPSITAL/CONVALESCENT CARE: This care will be guided by the Fee schedule of the Province in which the care is provided and will be covered in entirity as long as arising from the Compensable claim.

DENTAL: COvered as outlined in the Dental fee schedule in effect in the province in which the care is provided.

PHYSIO CARE: Provided for 21 visits at a rate of 23.00 per visit for reivew and contiuation as case will support in its need.

MEDICATION COSTS: These fees will be monitored from pharmacy to pharmacy but in most cases will be paid as billed any adjustment or excessive fees will be reviewed with Ex . Directors Office prior to payment.

64

POLICY: MEDICAL AID

L. A claimant can go to OPD then to his family doctor.

2. A family doctor is the mainstay of claim, he receives all medical documentation in copy from this Board to ensure his up to date records.

3. A claimant can see a chiropractor as the first attending medical care. (see Agreement with chiro's for care)

4. Changing from family M.D. to any other treator, or chiro to any other facility must be approved by the Claims Department and unless indications are detrimental in the care of the worker a referral will be favourably considered not exceeding 2 changes in a total case.

65

POLICY ON CHIROPRACTIC CARE:

1. the number of treatments and x rays allowed is covered in the contract as well as the price allowed.

A. If it is found that the chiropractor is charging a surcharge to the claimant then the proof and statement of same should be given to the Ex. Director who will decide what to do. Contravention of Section 18 (4)

B. If a chiropractor asks for extension this goes to the Ex. Director.

C. If the chiropractor asks for extra treatments or x rays, check with Ex. Director. On x rays the age of the claimant, child bearing years, etc., the general health of the worker, the number of x rays already taken in the last year(s) and basic reason for wanting more x rays must be all taken into consideration and the final decision is made by the Ex. Director or the Board on any special requests.

ok. T.D.

66

pOLICY   Medical Aid costs, incomplete claims.

All medical aid cases over 6 months to be approved by Executive Director for payment. In the event of the Executive Director being unavailable a person so designated may approve payment.

Medical aid meeting the above criteria may be approved with a medical report and/or an employers, or employees report of accident.

POLICY _ RELEASE OF INFORMATION FINANCE, ADMINISTRATION, ETC.

Specific requests will be met with as much as possible without breaching confidence of others covered for such information as injury costs and statistics, assessment rates, class costs which determine rates, etc.

69

POLICY ON RELEASE OF INFORMATION

1. The Claims Department is to ensure that the family doctor receives a copy of all tests, consuits, surgeries, etc., from this office unless indicated on the report that a copy was already directed to the family doctor.

2. The claimant and his representativ (upon release from claimant to discuss his file contents with another person present) is entitled to have the diagnosis, treatment and prognosis outlined to him (without copies), the reports will be discussed and the relationship to injury or accident.

3. Each consultant is entitled to a copy of the dossier for appointments priorily approved or arranged by this Board in the treatment of a compensation case. Each dossier is to be stamped "Not to be released etc."

4. Copies of letters to or letters from, each individual can be released to the sender or receiver.

5. The claimant can have copies of his "Claim Report" letter to or from him.

6. Employer can have copy of his report and letter to or from him.

Etc.

o.k. T.D.

70

POLICY: CLAIMANT COMPLAINT REPORTS.

If an officer or staff member receives a statement from any caller regarding a claimant with this Board, no information as to whether or not that person is on claim is to be divulged.

The caller if s/he makes a statement or allegation is to be thanked for their concern, the claims department or whatever department is involved, is to contact the parties, meet face to face, state the phone report and ask for clarification if any. No identification of where the call came from is to be made to the claimant, this is not a confrontation, but, the claimant is to be allowed an opportunity to answer any statement made on them.

ok.. T.O

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SOLICTORS & SECOND PERSON INQUIRIES

If a person other than the claimant makes an inquiry on the part of the claimant no information is to be divulged without a signed permission to discuss the case with the person making the inquiry.

The Medical Reports can be read in their entirity to either the claimant or the representative by a designated person from the Board.

Questions will be answered based on fact not supposition and counselling will be given on appeals and how to make appeals by the designated person.

To prevent what could progress into a problem the following practice for making referral consults on claimants covered by the P.E.I. Board the following steps should be practiced.

1. Approval for referral can be obtained by a phone call to the Board Offices. A written confirmation of the referral being okeyed, will be forwarded by the Claims Department to the doctor making the referral with a copy to the worker and the consultant to whom the referral is being made. The Claims Officer will provide a copy of the claimants dosier to the consultant prior to the appointment date. All consult reports will be automatically copied by the Claims Officer and forwarded to the family doctor and the referring doctor, if one is not one in the same person, unless the report indicates that a copy has already been issued to the above noted.

2. Referrals can be made by stating on the check up report that it is felt necessary in the case with suggested consultant, if the referring doctor has a preference, and the Claims Officer will make the arrangements through the Board Office and send copies of the date and time back to the referring doctor.

3. Preference is to refer claimants to local specialists but, if there is a specific reason for out of province referrals, each case will be judged on its merits.

ok. T.D.

January 26, 1989

POLICY RE REFERRALS

1. The initial visit to an Emergency Department will be treated as just that - an initial visit.

2. If the patient has not seen his/her family physician on that initial visit, he/she will be allowed to move to their family physician.

3. If a person goes to a medical practitioner and then wishes to go to a specialist (chiropracor), there are two avenues open to them:

   a) through referral from the medical practitioner, with the Board's approval.

   b) the patient coming to this office (if it's not contra-indicated) then a referral will be made from this office with this office advising the treating physician that such steps are being taken at the request of the injured worker.

4. If the case is that a referral is required by a family practitioner to a treating specialist, it again can be dealt with in two manners:

   a) the doctor can make the referral after indicating to this office (with our approval) that he wishes to do so.

   b) the doctor will notify this office that he wishes the referral and we will arrange it through this office (with whomever we can get the earliest appointment).

5. In the instance of a referral from specialist to specialist (particularly in view of surgery), the first specialist will be advised that it is Board Policy that a second opinion be obtained and that a referral is being made to a counterpart, giving date and time. Indicating also that upon receipt of this second report, the first specialist will then be contacted who the patient will return to, if surgery is supported.

6. In all of the above, the family doctor will be forwarded a copy of all reports received in this office (bone scans, X-rays, CT Scans, etc.) conducted by a specialist.

7. When making referral to a specialist (on the first occasion) or to a second specialist (in view of surgery), copies of the referrals and notice of appointments to the injured worker will also be sent to the family doctor so that he knows where the person's care is at in any point in time.

75

8. In making referrals, it is this Board's responsibility that everyone be advised beforehand, kept abreast of developments as they happen, that is, appointments, new X-rays, etc. and to ensure that a copy of the dossier is in the hands of the treating specialist prior to the appointment date.

9. When notification is sent to the injured worker re a new appt. date and time with a doctor, a copy of those expenses covered, i.e. mileage, meals, etc. is to accompany the letter of appointment notice.

10. Any questions regarding the above, please bring them to my attention.

Thanks, Elaine.

POLICY: Strains, etc. for Mechanical Conditions

If the claim is closed in excess of six (6) months and there is no continued treatment and no indication at the closure of the file that there is an ongoing permanent disability, then the further application will be denied without a new incident.

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WORKER'S COMPENSATION BOARD OF PRINCE EDWARD ISLAND
COMPENSATION POLICY - REPETITIVE STRESS INJURIES

Repetitive Stress Injuries ("R.S.I.") are to be dealt with as "disablements" under the Worker's Compensation Act.

Under the Worker's Compensation Act, R.S.P.E.I. c. W-10, the definition of "accident" reads as follows:

> 'In this Act, "accident" includes:
>
> (i) a willful and intentional act not being the act of the worker,
>
> (ii) a fortuitous event occasioned by a physical or natural cause, and
>
> (iii) a disablement arising out of and in the course of his employment."

By virtue of Section 6(1), compensation is payable where there has been a personal injury by accident arising out of and in the course of employment. Because of the definition of "accident" which includes simply disablements, it is not necessary that there must be an indentifiable event or occurence, or instance, or sudden unexpected injury during normal work duties. In other words a "chance event" is not necessary, and mere disablement over time can be considered to fall within the overall definition of "accident" and therefore, be compensatable provided, however, that to be compensatable, the disablement must arise out of and in the course of employment.

Therefore, it is no longer necessary to seek to find an event or instance which can be pointed to as the cause of the injury or disablement and it is now possible to compensate an injury or disablement which arises out of what could be considered repetitive stress injury.

Caution should be exercised in all cases of this nature where there is merely a disablement which appears to arise out of and in the course of employment over a period of time. There must be a most definite connection between the disablement and the employment, and the disablement must arise out of the worker's employment and also arise as a result of working in the course of the worker's employment.

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POLICY:

LIGHT DUTY PROGRAMS

In the light duty programs, an initial visit will be made during the first week of the program.

1. Modified or light duty programs will be arranged by the Rehabilitation Officer, John Gallant.
2. They will be policed by both Larry Phelan and John Gallant.
3. No modification will be made to the original program without consultation between the Rehabilitation Officer and persons as necessary, i.e., Claims Officer, etc.
4. Mr. Phelan will check on these programs to assist Mr. Gallant to cover the work load that's going to be involved.
5. A contact will be made between the injured worker, employer, and Mr. Gallant, not necessarily all together or Larry Phelan - once during the first week, once during the third week and again in the sixth week to ensure that the program goes the way it's intended. The file will be updated accordingly with a report.
6. These programs will be reviewed at "case study" if there appears to be any problem arising with them.

Thanks, Elaine.

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POLICY: CONFINEMENT TO DETOX CENTRE

Any case confined to a Detox Centre is to be brought to the attention of the Case Management Panel and is to be dealt with as Policy has been in the past, that is:

If Temporarily Total Disabled, it will be brought to the attention of the Board for further management as per the Compensation Act and have the funds consigned to a family member, if in fact there are members of the immediate family being supported by the Accident Benefits.

If it is Rehabilitation or otherwise, claim is closed until he/she is able to go back out into the work force to seek employment. This includes Pensioners.

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APPENDIX "I"

CLASSIFICATION OF INDUSTRIES

AND

PROVISIONAL ASSESSMENT RATES

Group		Rate
	CLASS 4 — CONSTRUCTION	
401.	Building construction, general construction including brick laying, mason work or stone cutting, concrete or cement work in or connected with buildings, insulation contracting structural carpentry not otherwise specified, house wrecking or house moving, erection steel building, suction dredging, construction of dry docks, piers, wharves, breakwaters, or other harbour improvements, including dredging, sub-aqueous construction or pile driving, installation of lighting rods, fire escapes, high chimneys, painting high structures	5.65
402.	Painting and decorating, electric wiring of buildings, installation of lighting fixtures, plumbing & heating, sheet metal work, plastering, lathing, tile and marble setting, glazing or installation of plate or leaded glass, bill posting and erection of bill board, installation of aluminum or metal doors and windows, partitions, shelving, kitchen and restaurant material, tunnelling, shaft sinking or well digging. Trenching for gas pipes, water pipes or wire conduits. Construction of wood and stave pipelines; septic tank services, landscaping, oil burner service, sandblasting, installation of carpet and flooring	3.05
403.	Construction, installation, maintenance or operation of electric light systems, power lines	2.30
404.	Road and runway construction including grading, ditching, paving and culverts. Trucking gravel, shale, fill asphalt for road construction. Asphalt plant operation, snow removal, operation of sand pits and quarries. City, town or municipal road and street maintenance or repair. Street cleaning. City, town or municipal water and sewer system construction and maintenance. Bridge construction, concrete arch or culvert, including approach fills, and all work incidental thereto	2.95

Group		Rate
406.	Construction, installation when part of maintenance and operation of telegraph and telephone companies	.45
408.	Steel bridge construction, causeway construction. All construction over and under water in regards to Northumberland Strait crossing	10.00
410.	Student co-op projects	2.00
412.	LEAD projects	2.00
414.	Employment & Immigration Projects	4.00
419.	Employment & Immigration Training courses	.90
	CLASS 5 — TRANSPORTATION & SERVICES	
501.	General trucking, including truck transports, cartage; distribution & storage of coal, wood, fuel oil, propane gas; bulk petroleum products and distribution; inter-urban and rural bus transport; sanitation services, water transport, costal shipping, spraying of railway rights of way, ambulance service	3.10
502.	Amusement or recreation parks, clubs, etc. Health clubs, golf & curling clubs, funeral homes, kindergarten & day care services, hair salons, museums, campgrounds, churches bingo halls, wharfingers of ferry service, domestic help	.70
503.	Stevedoring (including loading of scows, barges, railway cars), freight handlers, checkers weighing and sampling at dockside	4.85
504.	Ground fish dragging	5.95
505.	Inshore fishing (by application)	4.00
506.	Accountants, doctors, dentists, lawyers, banks & trust companies, insurance & real estate agents, investment & finance services, engineers, architects, consulting services, other personnel services, office work as a primary business	.50

THE WORKER'S COMPENSATION BOARD

PROVINCE OF PRINCE EDWARD ISLAND

CLASSIFICATION OF INDUSTRIES
&
PROVISIONAL ASSESSMENT RATES

(PER $100.00 of the pay-roll)

MINIMUM ASSESSMENTS
RESIDENT EMPLOYER – $25.00
NON-RESIDENT EMPLOYER – $50.00

EFFECTIVE JANUARY 1st, 1990

RATES

CLASS 1 — MINING

Group		Rate
101.	Boring and drilling operation including water, gas and oil wells, diamond drilling	4.00
102.	Offshore drilling and related services	8.00

CLASS 2 — FOREST PRODUCTS

Group		Rate
201.	Logging, sawmills, sash & door planing mills, trucking and field operations incidental to logging	5.30

CLASS 3 — MANUFACTURE & SALE

Group		Rate
301.	Wooden box factories, coffin & casket industry, miscellaneous wood industries, other furniture industries, manufacturing agricultural implements, household furniture industry, signs and display industry, glassworks	1.75
302.	Iron foundries, metal stamping, pressing and coating industry, machine shops, special trade contractors, erection of metal plates, etc	2.30
303.	Meat processors, poultry processors, fruit & vegetable canners and preservers, abbatoirs, storage and warehousing incidental to above	2.80
304.	Shipbuilding and repair, 5 tons and greater	1.75
305.	Oyster fishing, fish products industry, wholesalers of fish, lobster and Irish moss, mussel farming	2.15
306	Wholesale & repair of farm machinery, heavy machinery & equipment, motor vehicle repair shops, blacksmithing & welding shops, aircraft parts & repairs, scrap & waste material, car washes, accessory, parts, tire & battery shops, service stations, garages, motor vehicle dealers, installation & maintenance of mechanical equipment, bottle exchanges, crane services, appliance repairs	1.90
307	Manufacture of concrete products, ready mix concrete, stone products, feed manufacturers, flax mills, manufacture, storage and sale of fertilizers, paint and chemicals etc	1.65
309	Manufacture of dairy products, including trucking of same, manufacture of soft drinks, including delivery, bakeries, mushroom growing	1.45
311	Farming (by application), produce dealers, services incidental to agriculture, including sundry operations and trucking, piggeries, aerial crop spraying, lime services	3.55
312	Laundries, self laundries, cleaners and pressers	.25
313	Printing, engraving, lithographing, embossing, bookbinding, newspaper publication, radio and television broadcasting, manufacture of tobacco products, manufacture of small leather goods, shoe repair shops, manufacture of cotton and jute bags, cordage and twine industry, leather tanneries, manufacture of bottle caps, wool, cloth mills, miscellaneous textile industries, upholstery	60
314.	Motion picture theatres and film exchange, bowling alleys and billiard parlours, photography, janitorial services, veterinary clinics, employment with school boards, universities, colleges, civic protective employees, air line services (groundwork only) security & collection services	1.05
315.	Wholesale and retail stores and incidental services. Accessories, parts, tire & battery shops no repairs	70
316	Hotels, motels, restaurants, taverns, lounges	80
317	Hospitals, nursing homes	1.50
318	Meat processors, poultry processors, fruit & vegetable canners and preservers, abbatoirs, storage and warehousing incidental to above (50 or more workers)	3.25

EXECUTIVE SUMMARY

OF

RECOMMENDATIONS

RECOMMENDATION L-1

THAT THE *WORKERS' COMPENSATION ACT*, CHAPTER W-7, BE COMPLETELY RE-WRITTEN. WE RECOMMEND THAT AT THE TIME THE ACT IS REWRITTEN THAT SPECIAL REGARD BE PAID TO THE REMOVAL OR REVISION OF OUT DATED LANGUAGE AND CONFLICTING SECTIONS; AND, THAT THE ACT BE DRAFTED IN THE SIMPLEST AND MOST COMPREHENSIBLE LANGUAGE POSSIBLE.

RECOMMENDATION L-2

SECTION 1(A) "ACCIDENT" AND "INJURY" INCLUDES, BUT IS NOT LIMITED TO,

(i) A WILLFUL AND INTENTIONAL ACT(S) NOT BEING THE ACT(S) OF THE WORKER,

(ii) AN UNFORESEEN OR UNPLANNED EVENT OCCASIONED BY A PHYSICAL OR NATURAL CAUSE,

(iii) DISABLEMENT ARISING OUT OF OR IN THE COURSE OF EMPLOYMENT OF A WORKER, AND

(iv) INCLUDES AN INDUSTRIAL DISEASE.

RECOMMENDATION L-3

SECTION 1(e) "COMMON LAW SPOUSE" SHOULD BE DELETED FROM THE ACT AND A DEFINITION FOR "SPOUSE" SUBSTITUTED THEREFORE:

SECTION 1(?) "SPOUSE" INCLUDES THE HUSBAND OR WIFE OF A WORKER AND INCLUDES A PERSON WHO, ALTHOUGH NOT LEGALLY MARRIED TO ANOTHER PERSON LIVES WITH THAT PERSON AS IF THEY WERE HUSBAND AND WIFE.

RECOMMENDATION L-4

SECTION 1(j) "INDUSTRIAL DISEASE" MEANS ANY DISEASE PECULIAR TO OR CHARACTERISTIC OF A PARTICULAR INDUSTRIAL PROCESS, TRADE OR OCCUPATION AND INCLUDES, BUT IS NOT LIMITED TO, THE DISEASES LISTED IN THE SCHEDULE.

RECOMMENDATION L-5 - MEDICAL AID

SECTION 1(0) "MEDICAL AID" INCLUDES MEDICAL AND OTHER SERVICES PROVIDED BY A MEDICAL PRACTITIONER OR RECOGNIZED PROFESSIONAL WHILE PRACTICING AS SUCH, NURSING SERVICES, HOSPITAL SERVICES, DRUGS, DRESSINGS, X-RAY TREATMENT, SPECIAL TREATMENT, TRANSPORTATION AND SUCH OTHER SERVICES, DEVICES, APPLIANCES AND SUCH OTHER THINGS AS THE BOARD MAY AUTHORIZE TO PROVIDE IN THE MEDICAL REHABILITATION OF THE INJURED WORKER.

RECOMMENDATION L-6

SECTION 1(p) "MEMBER OF THE FAMILY" MEANS SPOUSE, FATHER, MOTHER, GRANDPARENT, STEP-PARENT, CHILD, GRANDCHILD, STEP-CHILD, BROTHER, SISTER, HALF-BROTHER, HALF SISTER, AND A PERSON WHO STOOD IN LOCO PARENTIS TO THE WORKER OR TO WHOM THE WORKER STOOD IN LOCO PARENTIS.

RECOMMENDATION L-7

"OUT WORKER" MEANS A PERSON WHO PROVIDES HIS SERVICES OR WORK, OR A PERSON TO WHOM ARTICLES OR MATERIALS ARE GIVEN OUT TO BE MADE UP, CLEANED, WASHED, ALTERED, ORNAMENTED, FINISHED, REPAIRED OR ADAPTED FOR SALE IN HIS OWN HOME OR ON PREMISES NOT UNDER THE CONTROL OR MANAGEMENT OF THE PERSON WHO GAVE OUT THE ARTICLES OR MATERIALS OR WORK ASSIGNMENTS.

RECOMMENDATION L-8

SECTION 1(t) "REGULATIONS" MEANS REGULATIONS MADE UNDER AUTHORITY OF THIS ACT.

RECOMMENDATION L-9

SECTION 1(x) DELETE THE WORDS "FOR POSITIONS REQUIRED IN THE OPERATION OF RAILWAY TRAINS" IN SECTION 1(x)(i). AS WELL, DELETE THE WORDS "BUT DOES NOT INCLUDE A RECEIVER, LIQUIDATOR OR OTHER PERSON APPOINTED BY A COURT OR A JUDGE WITH POWER TO MANAGE OR CARRY ON THE BUSINESS OF A COMPANY FOR WINDING UP OR OTHER PURPOSES;" IN SECTION 1(x)(ii).

RECOMMENDATION L-10

SECTION 1(?) "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX(C.P.I.) FOR CHARLOTTETOWN/SUMMERSIDE PUBLISHED BY STATISTICS CANADA UNDER THE STATISTICS ACT (CANADA).

RECOMMENDATION L-11

SECTION 1(?) "APPEAL BOARD" MEANS

THE WORKERS' COMPENSATION APPEAL BOARD ESTABLISHED UNDER SECTION (?)

RECOMMENDATION L-12

SECTION 1(?) "PERSONAL COMFORT ALLOWANCE" MEANS AN ALLOWANCE WHICH IS TO BE USED FOR THE PAYMENT OF ITEMS OR SERVICES REQUIRED FOR PERSONAL CARE AND THE MAINTENANCE OF QUALITY OF LIFE.

RECOMMENDATION L-13

SECTION 1(?) "SUB-CONTRACTOR" MEANS A PERSON OR AN INDUSTRY CONTRACTING TO PERFORM PART OR ALL OF ANOTHER PERSONS OR INDUSTRY'S CONTRACT; OR, TO PROVIDE ALL OR A SPECIFIED PART OF THE WORK OR MATERIALS REQUIRED BY ANOTHER.

RECOMMENDATION L-14

SECTION 1(?) "EARNINGS" AND "REMUNERATION" INCLUDES SALARY, WAGES, COMMISSIONS, GRATUITIES, EARNINGS FOR OVERTIME, PIECE WORK, CONTRACT WORK, BONUSES, ALLOWANCES, BOARD AND LODGING CAPABLE OF BEING ESTIMATED IN TERMS OF MONEY, CREDITS AND ANY SUBSTITUTE FOR MONEY WHICH ARE PROVIDED WHOLLY AT THE EXPENSE OF THE EMPLOYER.

RECOMMENDATION L-15

SECTION 1(?) "IMPAIRMENT" MEANS A WORKER'S LOSS OF EARNING POWER RESULTING FROM AN ACCIDENT.

RECOMMENDATION L-16

SECTION 1(?) "DISABLEMENT" MEANS PHYSICAL OR PSYCHOLOGICAL DAMAGE OR LOSS RESULTING FROM AN ACCIDENT.

RECOMMENDATION L-17

SECTION 1(?) "MINISTER" MEANS A MINISTER OF THE CROWN CHARGED BY THE LIEUTENANT GOVERNOR IN COUNCIL WITH THE RESPONSIBILITY OF REPORTING TO THE LEGISLATURE ON BEHALF OF THE BOARD.

RECOMMENDATION L-18

SECTION 1(?) "MUNICIPALITY" MEANS AN AREA INCORPORATED AS A TOWN OR COMMUNITY UNDER THE MUNICIPALITIES ACT R.S.P.E.I. 1988, CAP. M-13, AND INCLUDES THE CITY OF CHARLOTTETOWN AND THE TOWN OF SUMMERSIDE.

RECOMMENDATION L-19

SECTION 2(1) ALL WORKERS WHO ARE WORKING FOR AN EMPLOYER FOR REMUNERATION AND WHO ARE SUBJECT TO PAY STATUTORY DEDUCTIONS (e.g. INCOME TAX, C.P.P., U.I.C.) SHALL BE COVERED BY WORKERS' COMPENSATION INSURANCE AND THE EMPLOYER SHALL BE ASSESSED ACCORDINGLY.

RECOMMENDATION L-20

SECTION 5 BE RENUMBERED 5(1) AND THAT ADDITIONAL PROVINCIAL LEGISLATION WHICH PROHIBITS THE EMPLOYMENT OF UNDER AGE WORKERS, IN PARTICULAR CIRCUMSTANCES, BE REFERENCED HERE AS WELL; e.g. THE LIQUOR CONTROL ACT, THE CONSTRUCTION SAFETY ACT, ETC.

(2) WHERE AN EMPLOYER EMPLOYS A WORKER IN CIRCUMSTANCES WHICH ARE IN VIOLATION OF ANY PROVINCIAL STATUTE AND THAT WORKER SUFFERS AN INJURY WHICH IS COMPENSABLE UNDER THIS ACT, THE BOARD SHALL BE EMPOWERED TO RECOVER FROM THE EMPLOYER ANY AND ALL COSTS, IN WHOLE OR IN PART, THAT HAVE BEEN PAID BY THE BOARD FROM THE ACCIDENT FUND ON BEHALF OF THE INJURED WORKER.

RECOMMENDATION L-21

(A) SECTION 6(1)(a) - DELETE THE WORDS "FOUR DAYS" IN THE SIXTH LINE AND SUBSTITUTE "ONE DAY."

(B) SECTION 6(3) - SHALL REMAIN AS IS, WITH THE COMMENT THAT THE PROPER INTERPRETATION OF THIS SECTION IS THAT COMPENSATION IS PAYABLE FROM THE HOUR OF THE INJURY WHERE AN INJURED WORKER QUALIFIES FOR COMPENSATION.

(C) SECTION 18(1) - DELETE THE WORDS "FOUR DAYS" IN LINE THREE AND SUBSTITUTE "ONE DAY."

RECOMMENDATION L-22

SECTION 6(1)(b) - THAT THIS SECTION BE REPEALED.

RECOMMENDATION L-23

SECTION 6(4) - FOR THE SAKE OF PROPER UNDERSTANDING, INTERPRETATION AND CONSISTENCY, DELETE THE WORD "REPORT" IN LINE FIVE AND SUBSTITUTE "NOTICE."

RECOMMENDATION L-24

SECTION 6(6) - THAT THIS SECTION BE REPEALED.

RECOMMENDATION L-25

SECTION 9(1) - FOR THE SAKE OF PROPER UNDERSTANDING, INTERPRETATION AND CONSISTENCY, ADD THE WORD "OTHER" IN LINE FOUR BEFORE THE WORDS "PROVINCES, COUNTRY OR JURISDICTION" AND AGAIN IN LINE SEVEN BEFORE THE SAME FOUR WORDS.

RECOMMENDATION L-26

SECTION 12(3) - SECTION 12(1) AND (2) SHALL NOT APPLY IF THE ACCIDENT REFERRED TO IN SECTION 11(1) HAPPENS TO THE WORKER AS A RESULT OF THE WORKER DRIVING OR BEING A PASSENGER IN A MOTOR VEHICLE AS DEFINED IN THE *HIGHWAY TRAFFIC ACT* THAT IS REGISTERED OR REQUIRED TO BE REGISTERED UNDER THAT ACT.

RECOMMENDATION L-27

SECTION 14 - FOR THE SAKE OF UNDERSTANDING AND CLARITY, DELETE THE WORD "COMPETENT" IN THE FIRST LINE AND SUBSTITUTE "A PERMISSIBLE ACT."

RECOMMENDATION L-28

SECTION 17 - FOR THE SAKE OF UNDERSTANDING AND CLARITY, DELETE THE WORDS "ADDUCE CONCLUSIVE" IN THE THIRD AND FOURTH LINES AND SUBSTITUTE "PROVIDE FACTS, EVIDENCE OR INSTANCES AS."

RECOMMENDATION L-29

SECTION 18(1) - DELETE THE WORD "SPECTACLES" IN LINES SEVEN AND EIGHT AND SUBSTITUTE "CORRECTIVE LENSES."

RECOMMENDATION L-30

SECTION 18(6) - NO EMPLOYER DIRECTLY OR INDIRECTLY SHALL COLLECT, OR RECEIVE, OR RETAIN FROM ANY WORKER ANY CONTRIBUTION TOWARDS THE EXPENSE OF MEDICAL AID, AND EVERY PERSON CONTRAVENING THIS PROVISION IS, FOR EVERY SUCH CONTRAVENTION, LIABLE TO A FINE AND IS ALSO LIABLE, UPON THE ORDER OF THE BOARD, TO REIMBURSE THE WORKER TREBLE THE AMOUNT OF ANY SUM SO COLLECTED, RECEIVED OR RETAINED.

RECOMMENDATION L-31

SECTION 18(7) - THAT THIS SECTION BE REPEALED.

RECOMMENDATION L-32

SECTION 18(9) - THAT THIS SECTION BE REPEALED.

RECOMMENDATION L-33

(A) SECTION 18(16) - THAT THE SECTION BE SEPARATED FROM SECTION 18 AS IT PRESENTLY EXISTS AND BE SET OUT IN LEGISLATION AS A SEPARATE SECTION ON TO ITSELF.

(B) THAT THE WORD "MAY" IN THE THIRD LINE BE DELETED AND SUBSTITUTE "SHALL."

(C) THAT A PREAMBLE, AS FOLLOWS, BE INSERTED INTO THE NEW SECTION. SUCH, WE ARE AWARE, IS AN EXTRAORDINARY MEASURE AND NON-TRADITIONAL IN P.E.I.'S LEGISLATIVE STRUCTURING, HOWEVER, AS WE HAVE ASSERTED HEREIN, REHABILITATION IS A CRITICAL ISSUE AND DESERVES SPECIAL ATTENTION.

PREAMBLE:

REHABILITATION

(Medical and Vocational)

"A MAJOR PRINCIPLE OF THE COMPENSATION SYSTEM IS TO RESTORE INJURED WORKERS TO PRODUCTIVE EMPLOYMENT: WITH THE PRE-INJURY EMPLOYER WHERE POSSIBLE; AND, WITH SUITABLE ERGONOMIC JOB MODIFICATION WHERE FEASIBLE."

THE AIMS OF REHABILITATION SHALL BE:

- EARLY REFERRAL FROM CLAIM TO REHAB AND EARLY REACTIVATION OF INJURED WORKERS TO SUITABLE AND APPROPRIATE EMPLOYMENT;
- WORKERS' COMPENSATION MUST BE INNOVATIVE, PROACTIVE AND AGGRESSIVE IN ITS APPROACH TO PROVIDING A WIDE RANGE OF REHAB SERVICES TO WORKERS' COMPENSATION;
- TO PROMOTE THE INDEPENDENCE AND AUTONOMY OF EACH INJURED WORKER;
- TO TREAT ALL ASPECTS OF THE DISABILITY, E.G. PHYSICAL, MENTAL, VOCATIONAL AND ECONOMIC;
- TO ENSURE THAT THE WORKER IS PHYSICALLY AND PSYCHOLOGICALLY PREPARED TO WORK IN THE SPECIFIC EMPLOYMENT SITUATION FOR WHICH HE/SHE IS TO BE TRAINED;

- TO ENSURE THAT THE INJURED WORKER LEARNS SKILLS THAT ARE MARKETABLE AND COMPATIBLE WITH THE INDIVIDUAL WORKER AND WHICH WILL PROVIDE CONTINUED OPPORTUNITIES FOR EMPLOYMENT;
- REHABILITATION BASED ON A MUTUALLY ACCEPTABLE REHAB PLAN INVOLVING THE INJURED WORKER, THE WORKERS' COMPENSATION BOARD, THE WORKER'S MEDICAL DOCTOR, ETC., IN THE PLANNING;
- PROVIDE JOB REFERRAL SERVICE AT THE CONCLUSION OF THE REHABILITATION PROGRAM.

(D) FINALLY, THAT THE BOARD DEVELOP, AND PUBLISH A 'PROCEDURE MANUAL' THAT INCORPORATES THE CURRENT REHABILITATION POLICY, THE RELEVANT LEGISLATION, REHABILITATION SERVICES PROVIDED BY THE BOARD, THE PROCESS OF REHABILITATION, AND OTHER PERTINENT INFORMATION RELATED TO THE ISSUE.

RECOMMENDATION L-34

(A) SECTION 19(1) - THIS ACT SHALL BE ADMINISTERED BY A BODY CORPORATE CALLED THE "WORKERS' COMPENSATION BOARD OF PRINCE EDWARD ISLAND" AND THERE SHALL BE ESTABLISHED A BOARD OF GOVERNORS RESPONSIBLE FOR THE ADMINISTRATION OF THE "WORKERS' COMPENSATION BOARD".

(B) SECTION 19(2) - THE BOARD OF GOVERNORS SHALL CONSIST OF THREE MEMBERS APPOINTED BY THE LIEUTENANT GOVERNOR IN COUNCIL AND NOTWITHSTANDING ANY PROVISION OF THE INTERPRETATION ACT, R.S.P.E.I. 1988, CAP. 1-8, BUT SUBJECT TO SUBSECTION (3), THE MEMBERS OF THE BOARD OF GOVERNORS SHALL HOLD OFFICE FOR A PERIOD OF FIVE YEARS AND ARE ELIGIBLE FOR REAPPOINTMENT SUBJECT TO REMOVAL FROM OFFICE BY THE LIEUTENANT GOVERNOR IN COUNCIL ONLY FOR JUST CAUSE.

(C) THAT THE BOARD OF GOVERNORS CONTINUE TO BE TRIPARTITE IN NATURE, WITH EQUAL REPRESENTATION FROM BUSINESS AND LABOUR, WITH AN ACCEPTABLE NEUTRAL CHAIR AND THAT THIS PRINCIPLE BE WRITTEN INTO THE LAW.

(D) THAT, AS A MATTER OF PRINCIPLE, GOVERNMENT CLOSELY CONSULT WITH THE RESPECTIVE INTEREST GROUPS ON THE APPOINTMENT OF THE CHAIR TO THE BOARD OF GOVERNORS.

(E) THAT, AS A MATTER OF PRINCIPLE, GOVERNMENT SEEK NOMINATIONS FROM THE RESPECTIVE INTEREST GROUPS WHEN SEEKING APPOINTMENTS TO THE GOVERNOR POSITION ON THE BOARD.

(F) THAT THE CHAIR'S POSITION CONTINUE AS A FULL-TIME POSITION *DURING THE PERIOD OF RE-ORGANIZATION*, AS RECOMMENDED LATER IN THIS REPORT, AND REVERT TO A PART-TIME POSITION FOLLOWING THE RE-ORGANIZATION.

(G) THAT THE GOVERNOR POSITIONS CONTINUE AS PART-TIME POSITIONS.

(H) THAT THE TERMS OF OFFICE OF ALL GOVERNORS, INCLUDING THE CHAIR, TO THE BOARD SHALL BE FOR FIVE YEARS AND THAT THEY SHOULD BE ELIGIBLE FOR RE-APPOINTMENT.

(I) THE TERMS OF OFFICE OF THE GOVERNORS SHALL NOT COINCIDE ONE WITH THE OTHER.

RECOMMENDATION L-35

NEW SECTION - DUTIES AND POWERS

(A) THE BOARD OF GOVERNORS SHALL ESTABLISH POLICIES AND PROGRAMS CONSISTENT WITH THE ACT AND REGULATIONS IN RELATION TO:

(i) COMPENSATION BENEFITS TO INJURED WORKERS AND DEPENDENTS,

(ii) REHABILITATION OF INJURED WORKERS,

(iii) ASSESSMENTS AND INVESTMENTS,

(iv) POLICIES SHALL ENSURE THE INTENT OF THE ACT IS BEING APPLIED TO PROVIDE SERVICES TO INJURED WORKERS AND DEPENDENTS AND SHALL PROMOTE ADEQUATE FUNDING FOR THE SERVICES THROUGH SOUND FINANCIAL ARRANGEMENT.

(B) THE BOARD OF GOVERNORS SHALL:

(i) CONSIDER AND APPROVE ANNUAL ADMINISTRATIVE AND OPERATING BUDGETS AND APPOINT AUDITORS TO AUDIT THE BOOKS AND ACCOUNTS OF THE BOARD,

(ii) ENACT BY-LAWS, POLICIES AND PRACTICES FOR THE GOOD CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD,

(iii) REVIEW THE ACT AND REGULATIONS AND RECOMMEND TO THE MINISTER SUCH CHANGES AS IT DEEMS ADVISABLE.

(C) THE BOARD OF GOVERNORS SHALL:

(i) INVEST, OR APPOINT AN INVESTMENT MANAGER WHO SHALL INVEST, ANY FUNDS ARISING UNDER THIS ACT AND ANY OTHER MONIES UNDER ITS CONTROL IN ACCORDANCE WITH THE ACT AND SELL ANY SECURITIES AND RE-INVEST THE PROCEEDS OR USE THE PROCEEDS IN ACCORDANCE WITH THE ACT.

(ii) PLACE ANY OF ITS FUNDS AND MONIES ON DEPOSIT IN A CHARTERED BANK.

(D) THE BOARD OF GOVERNORS SHALL:

(i) ACCEPT, CONSIDER AND DETERMINE APPEALS FROM DECISIONS OF THE APPEAL TRIBUNAL THAT ALLEGE VIOLATIONS OF BOARD POLICIES, BY-LAWS OR PRACTICES BY THE APPEAL TRIBUNAL IN ITS' DECISION.

(ii) THE BOARD OF GOVERNORS SHALL NOT DETERMINE APPEALS ON GROUNDS OTHER THAN THOSE SET OUT IN (i) ABOVE.

RECOMMENDATION L-36

(A) SECTION 20(2) - THAT THIS SECTION BE REPEALED.

(B) PERSONS APPOINTED UNDER THIS SECTION SHOULD TAKE AND SUBSCRIBE AN OATH OR AFFIRMATION OF OFFICE IN A PRESCRIBED FORM.

RECOMMENDATION L-37

(A) SECTION 23 - THAT THE CHAIR CONTINUE TO BE REMUNERATED AT THE SALARY LEVEL PRESENTLY EXISTING *FOR THE PERIOD OF RE-ORGANIZATION.*

(B) THAT FOLLOWING THE RE-ORGANIZATION THE CHAIR BE REMUNERATED AT $10,000.00 PER ANNUM PLUS $200.00 PER DIEM.

(C) THAT THE GOVERNORS (MEMBERS) CONTINUE TO BE REMUNERATED AT THE SALARY LEVEL PRESENTLY EXISTING *FOR THE PERIOD OF RE-ORGANIZATION.*

(D) THAT FOLLOWING THE RE-ORGANIZATION THE GOVERNORS BE REMUNERATED AT $5,000.00 PER ANNUM PLUS $100.00 PER DIEM.

RECOMMENDATION L-38

(A) SECTION 28 - THAT THE EXISTING SECTION BE REPEALED.

(B) THAT THE FOLLOWING BE SUBSTITUTED FOR THE REPEALED SECTION: THE BOARD SHALL APPOINT A CHIEF EXECUTIVE OFFICER AND A STAFF OF SUCH OTHER PERSONS AS IT CONSIDERS NECESSARY FOR CARRYING OUT THE PROVISIONS OF THIS ACT.

(C) THAT ANY POSITIONS CREATED BY THE BOARD SHALL FOLLOW THE POSITION CLASSIFICATION SYSTEM WHICH EXISTS WITHIN THE CIVIL SERVICE COMMISSION OF THE PROVINCE.

(D) THAT WHERE ANY POSITION IS CREATED AT THE BOARD AND A POSITION CLASSIFICATION DESCRIPTION DOES NOT EXIST WITHIN THE CIVIL SERVICE SYSTEM PRESENTLY, THE BOARD SHALL REQUEST THE CIVIL SERVICE COMMISSION TO PREPARE AN APPROPRIATE DESCRIPTION FOR THEIR USE. THE COMMISSION SHALL COMPLY AND THE BOARD SHALL COOPERATE WITH THE COMMISSION AND BE COMPELLED TO UTILIZE ALL JOB DESCRIPTIONS AS SUPPLIED BY THE COMMISSION.

(E) THAT THE CIVIL SERVICE COMMISSION SHALL BE RESPONSIBLE FOR DETERMINING JOB DESCRIPTIONS AND THE NECESSARY QUALIFICATIONS FOR ALL JOBS AT THE BOARD USING THE SAME CRITERIA FOR ESTABLISHING POSITIONS IN THE GOVERNMENT SERVICE.

(F) THAT ALL VACANCIES OR NEW POSITIONS CREATED, WHICH OCCUR AT THE BOARD AND WHICH ARE NOT FILLED BY EXISTING STAFF AT THE BOARD THROUGH PROMOTION, SHALL BE ADVERTISED PUBLICLY AND OPEN JOB COMPETITIONS SHALL BE THE METHOD FOR FILLING SUCH POSITIONS.

(G) THAT THE BOARD WILL HAVE THE UNFETTERED RIGHT TO HIRE THE BEST QUALIFIED, BEST SUITED APPLICANT FOLLOWING A BONA-FIDE INTERVIEW AND TESTING PROCESS.

(H) THAT THE CIVIL SERVICE COMMISSION SHALL HAVE NO AUTHORITY OVER HIRING, FIRING, PROMOTIONS, ETC. OF STAFF AT THE BOARD *EXCEPT* AS OTHERWISE SET OUT HEREIN AND THAT ANY NECESSARY AMENDMENTS TO THE CIVIL SERVICE ACT SHALL BE AFFECTED TO ENSURE SUCH IS THE CASE.

(I) THAT THE BOARD SHOULD NOT HAVE THE PRIVILEGE TO HIRE STAFF ON A CONTRACT OR CASUAL BASIS EXCEPT UNDER THE STRICTEST OF TERMS RELATED TO A SPECIFIC PROJECT WHICH HAS A PREDETERMINED COMMENCEMENT AND COMPLETION DATE. THE PROJECT SHOULD BE SPECIFIC TO A BONA-FIDE FUNCTION OF THE BOARD AND

CONTRACT OR CASUAL EMPLOYMENT SHALL ONLY BE UTILIZED WHERE EXISTING STAFF ARE UNABLE, BY VIRTUE OF QUALIFICATIONS OR NUMBERS, TO FULFILL THE NEED.

(J) THAT WHERE STAFF FALL WITHIN CLASSIFICATION STRUCTURES THAT ARE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PROVINCIAL GOVERNMENT AND THE UNION OF PUBLIC SECTOR EMPLOYEES, THE COLLECTIVE AGREEMENT SHALL CONTINUE TO APPLY TO SUCH STAFF OF THE BOARD AS IF THEY WERE CIVIL SERVICE EMPLOYEES AND THE BOARD SHALL BE BOUND BY THE COLLECTIVE AGREEMENT IN ALL RESPECTS, AS IF IT WERE THE EMPLOYER UNDER THE AGREEMENT. THE WORKERS' COMPENSATION BOARD SHOULD BE SPECIFICALLY REFERENCED IN THE COLLECTIVE AGREEMENT AS AN EMPLOYER.

RECOMMENDATION L-39

NEW SECTION - CHIEF EXECUTIVE OFFICER

(A) THAT THE POSITION OF CHIEF EXECUTIVE OFFICER OF THE WORKERS' COMPENSATION BOARD BE CREATED.

(B) THAT THE POSITION OF CHIEF EXECUTIVE OFFICER BE RESPONSIBLE TO AND REPORT TO THE BOARD.

(C) THAT THE POSITION OF CHIEF EXECUTIVE OFFICER BE AN EX-OFFICIO MEMBER OF THE BOARD WITHOUT A VOTE. ALTHOUGH AN EX-OFFICIO MEMBER THE C.E.O. IS NOT TO BE CONSIDERED A GOVERNOR.

(D) THAT, AS THE CHIEF ADMINISTRATIVE OFFICER, THE CHIEF EXECUTIVE OFFICER IS RESPONSIBLE FOR THE DAY-TO-DAY MANAGEMENT OF THE WORKER'S COMPENSATION BOARD AND FOR ENSURING THAT THE DIRECTIONS OF THE BOARD ARE CARRIED OUT.

(E) THAT THE CHIEF EXECUTIVE OFFICER SHOULD POSSESS A CLEAR COMMITMENT TO THE MATTERS WITHIN THE JURISDICTION OF THE WORKERS' COMPENSATION BOARD AND SHALL POSSESS STRONG ADMINISTRATIVE AND EXECUTIVE SKILLS.

(F) THAT THE CHIEF EXECUTIVE OFFICER HAVE NO ROLE OR INVOLVEMENT IN THE FINAL ADJUDICATION OF CLAIMS APPEALS.

(G) THAT THE CIVIL SERVICE COMMISSION PROVIDE THE BOARD WITH THE APPROPRIATE POSITION CLASSIFICATION DESCRIPTION AND THE REQUIRED QUALIFICATIONS FOR THE POSITION OF CHIEF EXECUTIVE OFFICER.

(H) THAT THE BOARD ADVERTISE THE POSITION PUBLICLY FOR AN APPROPRIATE PERIOD OF TIME.

(I) THAT THE BOARD RETAIN THE SERVICES OF A REPUTABLE PERSONNEL FIRM TO CONDUCT INTERVIEWS OF ALL APPLICANTS WHO MEET THE QUALIFICATIONS AS ADVERTISED AND RECOMMEND THE BEST QUALIFIED APPLICANT TO THE BOARD.

(J) THAT THE BOARD BE PERMITTED TO NEGOTIATE AN EMPLOYMENT CONTRACT, COMPENSATION AND BENEFITS PACKAGE WITH THE SUCCESSFUL APPLICANT.

(K) THAT THE POSITION SHOULD PAY, *NO LESS* THAN $60,000.00 PER ANNUM SO AS TO ATTRACT COMPETENT INDIVIDUALS.

(L) THAT THE C.E.O. BE HIRED PRIOR TO THE RE-ORGANIZATION AS RECOMMENDED LATER IN THIS REPORT.

(M) THAT THE C.E.O. WORK CLOSELY WITH THE BOARD AND ITS CHAIRMAN IN THE RE-ORGANIZATION OF THE WORKERS' COMPENSATION BOARD.

RECOMMENDATION L-40

(A) NEW SECTION - THAT THE *AUDIT ACT*, CHAPTER A-24, SHALL APPLY TO THE WORKERS' COMPENSATION BOARD FOR THE PURPOSES OF ADMINISTRATIVE AND FINANCIAL AUDIT IN ADDITION TO AND REGARDLESS OF THE FACT OF THE REQUIRED AUDIT AS SET OUT IN SECTION 33 OF THE WORKERS' COMPENSATION ACT.

(B) THAT THE AUDITOR GENERAL AUDIT THE BOARD, NO LESS FREQUENTLY THAN EVERY FOUR (4) YEARS AND REPORT TO THE LEGISLATIVE ASSEMBLY ON HIS FINDINGS AND RECOMMENDATIONS ON EACH OCCASION.

RECOMMENDATION L-41

(A) SECTION 32 - THAT SECTIONS 32(1), (2), (3), (4) AND (7) SHOULD BE REPEALED.

(B) THAT THE FOLLOWING PRIVATIVE CLAUSE SHOULD BE INSERTED INTO THE ACT: THE BOARD HAS EXCLUSIVE JURISDICTION TO EXAMINE INTO, HEAR, AND DETERMINE, ALL MATTERS AND QUESTIONS ARISING

UNDER THIS ACT AND AS TO ANY MATTER OR THING IN RESPECT OF WHICH ANY POWER, AUTHORITY, OR DISCRETION, IS CONFERRED UPON THE BOARD; AND THE ACTION OR DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE AND IS NOT OPEN TO QUESTION OR REVIEW IN ANY COURT; **AND NO PROCEEDINGS BY OR BEFORE THE BOARD SHALL BE RESTRAINED BY INJUNCTION, PROHIBITION, OR OTHER PROCESS OR PROCEEDING IN ANY COURT, OR ARE REMOVABLE BY CERTIORARI OR OTHERWISE INTO ANY COURT.**

(C) THAT THE DECISIONS AND FINDINGS OF THE BOARD UPON ALL QUESTIONS OF LAW AND FACT ARE FINAL AND CONCLUSIVE, AND IN PARTICULAR, BUT NOT SO AS TO RESTRICT THE GENERALITY OF THE POWERS OF THE BOARD HEREUNDER, THE FOLLOWING SHALL BE DEEMED TO BE QUESTIONS OF FACT:

(i) THE QUESTION WHETHER AN INJURY HAS ARISEN OUT OF OR IN THE COURSE OF ANY EMPLOYMENT WITHIN THE SCOPE OF THIS ACT;

(ii) THE EXISTENCE AND DEGREE OF DISABILITY BY REASON OF ANY INJURY;

(iii) THE PERMANENCE OF DISABILITY BY ANY INJURY;

(iv) THE DEGREE OF DIMINUTION OF EARNING CAPACITY BY REASON OF ANY INJURY;

(v) THE AMOUNT OF AVERAGE EARNINGS;

(vi) THE EXISTENCE OF THE RELATIONSHIP OF A MEMBER OF THE FAMILY;

(vii) THE EXISTENCE OF DEPENDENCY;

(viii) THE CHARACTER, FOR THE PURPOSE OF THIS ACT, OF ANY EMPLOYMENT, ESTABLISHMENT OR DEPARTMENT AND THE CLASS TO WHICH SUCH EMPLOYMENT, ESTABLISHMENT OR DEPARTMENT SHOULD BE ASSIGNED;

(ix) WHETHER OR NOT ANY EMPLOYEE IN ANY INDUSTRY WITHIN THE SCOPE OF THIS PART IS HIMSELF WITHIN THE SCOPE OF THIS PART AND ENTITLED TO COMPENSATION THEREUNDER;

(x) THE QUESTION WHETHER PERSONAL INJURY OR DEATH HAS BEEN CAUSED BY ACCIDENT.

(D) THAT SECTIONS 32(5) AND (6) BE CONTINUED IN THE ACT:

(i) THE BOARD MAY OF ITS OWN MOTION STATE A CASE IN WRITING FOR THE OPINION OF THE SUPREME COURT IN BANCO UPON ANY QUESTION WHICH IN THE OPINION OF THE BOARD IS A QUESTION OF LAW.

(ii) HEAR AND DETERMINE THE QUESTIONS OF LAW ARISING THEREON AND REMIT THE MATTER TO THE BOARD, WITH THE OPINION OF THE COURT THEREON.

RECOMMENDATION L-42

SECTION 34 - ANNUAL REPORT

(A) THAT THE WORDS "OF LABOUR" IN LINE TWO SHOULD BE DELETED. IT IS NOT NECESSARY, WITH THE PROPOSED DEFINITION OF MINISTER IN SECTION 1 TO IDENTIFY THE MINISTER OF LABOUR OR ANY OTHER SPECIFIC MINISTER HEREIN.

(B) THE COMMITTEE IS PERSUADED THAT THE ANNUAL REPORT OF THE BOARD SHOULD CONTAIN BROADENED AND MORE DETAILED INFORMATION AS IT PERTAINS TO FINANCES; THE ACTIVITIES OF THE BOARD FOR THE PRECEEDING YEAR; TO THE PLANS AND AGENDA FOR THE FUTURE; AND, TO INCLUDE THE INVESTMENT PORTFOLIO OF ITS' PENSION FUNDS.

WE WOULD RECOMMEND THAT THE FORMAT OF THE REPORT SHOULD INCLUDE, IN ADDITION TO THE PRESENTLY RECORDED STATISTICS; A SECTION WHICH SHOULD HIGHLIGHT SOME OF THE MORE INTERESTING AND INFORMATIVE ACTIVITIES OR PROJECTS OF THE BOARD IN THE PRECEEDING YEAR; THE CHAIRMAN'S MESSAGE OR REPORT; THE CHIEF EXECUTIVE OFFICERS' REPORT; THE CHIEF APPEALS COMMISSIONERS' REPORT; SPECIFIC REFERENCE TO PENSIONS BEING PAID WITH REGARD TO NUMBERS, CATEGORIES, VALUES, ETC.; SOME DETAIL WITH REGARD TO THE STRUCTURE OR MAKE-UP OF CLASSES. A SUBSIDIARY FINANCIAL REPORT SHOULD BE AVAILABLE, UPON REQUEST, WHICH DETAILS THE EXPERIENCE OF INDIVIDUAL CLASSES AND SUB-CLASSES (ASSESSMENTS RECEIVED VS. MONIES PAID OUT) OVER THE PAST YEAR.

RECOMMENDATION L-43

SECTION 37 - CIVIL SERVICE SUPERANNUATION ACT

(A) IN KEEPING WITH RECOMMENDATION L-28 THE COMMITTEE RECOMMENDS THAT SECTION 37 OF THE ACT BE LOOKED AT CAREFULLY TO ENSURE THAT THERE WILL EXIST NO CONFLICT BETWEEN THIS SECTION AND OUR RECOMMENDATION L-28.

(B) SHOULD THE POTENTIAL FOR CONFLICT EXIST, THEN SECTION 37 SHOULD BE AMENDED ACCORDINGLY SO AS TO REMOVE SUCH POTENTIAL FOR CONFLICT.

RECOMMENDATION L-44

NEW SECTION - APPEAL BOARD

(A) THAT AN APPEAL BOARD BE ESTABLISHED WITHIN LEGISLATION CONSISTING OF THE CHIEF APPEALS COMMISSIONER (C.A.C.) AND SIX COMMISSIONERS.

(B) THAT THE CHIEF APPEALS COMMISSIONER BE APPOINTED BY THE WORKERS' COMPENSATION BOARD IN CONSULTATION WITH EMPLOYER AND EMPLOYEE ORGANIZATIONS FOR A TERM OF NOT LESS THAN FIVE YEARS AND MAY BE RE-APPOINTED AT THE EXPIRATION OF HIS/HER TERM.

(C) THAT THE BOARD APPOINT A CHIEF APPEALS COMMISSIONER WHO BEST EXHIBITS THOSE ATTRIBUTES WHICH WOULD BE NECESSARY TO FUNCTION IN THIS ROLE IN A TIMELY, FAIR, EQUITABLE AND DEMOCRATIC FASHION AND A PERSON WHO IS ACCEPTABLE TO THE PARTIES OF INTEREST. THIS PERSON SHOULD HAVE A LEGAL BACKGROUND OR BE A PERSON TRAINED IN COMPENSATION LAW.

(D) THAT THE POSITION OF CHIEF APPEALS COMMISSIONER BE CREATED AS A "PART-TIME" POSITION.

(E) THAT THE POSITION OF CHIEF APPEALS COMMISSIONER BE RESPONSIBLE TO AND REPORT TO THE BOARD OF GOVERNORS.

(F) THAT THE POSITION OF CHIEF APPEALS COMMISSIONER BE AN EX-OFFICIO MEMBER OF THE BOARD OF GOVERNORS WITHOUT A VOTE. ALTHOUGH AN EX-OFFICIO MEMBER, THE C.A.C. IS NOT TO BE CONSIDERED A GOVERNOR.

(G) THAT THE CHIEF APPEALS COMMISSIONER IS RESPONSIBLE FOR THE PROPER FUNCTIONING OF THE APPEALS PROCESS AND FOR ENSURING SPEEDY, FAIR AND JUST DECISIONS ON ALL APPEALS THAT REACH HIS LEVEL.

(H) THAT THE CHIEF APPEALS COMMISSIONER SHOULD BE REMUNERATED AT $5000.00 PER ANNUM, PLUS $200.00 PER DIEM.

(I) THAT THERE SHOULD BE SIX COMMISSIONERS TO THE APPEALS BOARD COMPRISED OF THREE EMPLOYER REPRESENTATIVES AND THREE WORKER REPRESENTATIVES.

(J) THAT THE COMMISSIONERS BE APPOINTED TO THE APPEALS BOARD BY THE BOARD OF GOVERNORS FROM A LIST OF NAMES SUBMITTED TO THEM IN NOMINATION FROM EMPLOYER AND EMPLOYEE ORGANIZATIONS.

(K) THAT THE COMMISSIONERS BE APPOINTED TO THE APPEALS BOARD FOR TERMS OF NOT LESS THAN THREE YEARS AND NOT MORE THAN FIVE YEARS AND THAT THEY MAY BE RE-APPOINTED FOLLOWING EXPIRATION OF THEIR TERM.

(L) THAT THE APPOINTMENTS TO POSITIONS OF COMMISSIONER BE OF INDIVIDUALS WHO BEST EXHIBIT ATTRIBUTES WHICH ARE NECESSARY TO FULLFILL THE ROLE OF AN APPEALS COMMISSIONER. CAREFUL CONSIDERATION SHOULD BE GIVEN TO THE APPOINTMENT OF INDIVIDUALS WHO ARE REPRESENTATIVE OF THE SENIOR RANKS OF THEIR ORGANIZATIONS AND WHO HAVE DEMONSTRATED SKILLS IN MATTERS RELATED TO THE ADJUDICATIVE PROCESS.

(M) THAT THE COMMISSIONERS BE RESPONSIBLE TO AND REPORT TO THE CHIEF APPEALS COMMISSIONER.

(N) THAT THE COMMISSIONERS BE REMUNERATED AT $100.00 PER DIEM.

(O) THAT THE ADMINISTRATIVE EXPENSES OF THE APPEAL BOARD BE BORNE BY THE BOARD.

(P) THAT ALL APPEALS SHALL BE HEARD AND DECIDED BY A PANEL OF THREE, COMPRISING THE CHIEF APPEALS COMMISSIONER AS THE CHAIRMAN OF THE TRIBUNAL AND ONE COMMISSIONER REPRESENTING EMPLOYERS AND ONE COMMISIONER REPRESENTING WORKERS.

(Q) THAT THE CHIEF APPEALS COMMISSIONER SHALL HAVE THE AUTHORITY TO APPOINT A VICE-CHAIRMAN FROM EACH INTEREST OF REPRESENTATION AND THE VICE-CHAIRMAN MAY ACT AS CHAIRMAN WHEN THE CHIEF APPEALS COMMISSIONER IS ABSENT.

(R) THAT THE BOARD OF GOVERNORS SHALL ENSURE THE NECESSARY SERVICES OF A SUPPORT NATURE, E.G. CLERICAL/SECRETARIAL, TO THE APPEALS BOARD AS IS NECESSARY.

(S) THE COMMITTEE SEES APPEALS ARISING FROM MATTERS RELATED TO CLAIMS APPEALS, ASSESSMENT APPEALS AND PENALTY APPEALS.

IN EACH CASE THERE SHOULD BE ESTABLISHED, AND PUBLISHED, A CLEAR COURSE OF PROCESS TO FOLLOW IN ALL APPEALS, *FOR EXAMPLE*:

CLAIMS APPEALS

(i) FROM CLAIMS OFFICER TO DIRECTOR OF CLAIMS;

(ii) FROM DIRECTOR OF CLAIMS TO A MEDICAL PANEL;

(iii) FROM A MEDICAL PANEL TO APPEAL BOARD;

(iv) SHOULD ANYONE EXPERIENCE UNDUE DELAYS AT THE EARLIER LEVELS OF APPEAL THEY SHOULD NOT BE PROHIBITED FROM APPEALING TO THE NEXT LEVEL WITHIN A REASONABLE TIME FRAME AND SUCH SHOULD BE SET OUT IN THE LEGISLATION.

(v) APPEALS ARE NOT LIMITED TO CLAIMS FOR COMPENSATION AND INDEED MAY ARISE IN MATTERS RELATED TO ASSESSMENTS, PENALTIES, REHABILITATION, CLASS ASSIGNMENTS, AND PROVISIONS OF MEDICAL CARE AND SUCH SHOULD BE SET OUT IN THE LEGISLATION.

(T) THE CHIEF APPEALS COMMISSIONER MAY REFER TO A PANEL ANY MATTER THAT IS BEFORE ANOTHER PANEL, COMPRISED OF DIFFERENT MEMBERS FOR WHATEVER REASON HE/SHE MAY DETERMINE, TO ENSURE JUSTICE IS APPROPRIATELY CARRIED OUT IN THE MATTER.

(U) THAT A PANEL CEASES TO EXIST WHEN THE MATTER BEFORE IT HAS BEEN DECIDED.

(V) THAT ALL DECISIONS OF THE APPEAL BOARD SHALL BE IN WRITING, WITH REASONS.

(W) THAT FOR ALL PURPOSES, A DECISION OF A PANEL IS A DECISION OF THE APPEAL BOARD AND THE DECISION OF THE MAJORITY OF A PANEL REPRESENTS THE DECISION OF THE APPEAL BOARD.

(X) THAT NO MEMBER OF THE APPEAL BOARD MAY PARTICIPATE IN ANY APPEAL PROCESS IN WHICH A MEMBER HAS A DIRECT PERSONAL INTEREST OR IN WHICH THE CHIEF APPEALS COMMISSIONER DETERMINES THERE IS A CONFLICT OF INTEREST.

(Y) (i) THAT THE PROCEDURE BEFORE THE APPEALS BOARD SHOULD BE, LIKE PRIMARY ADJUDICATION, ON THE **"INQUIRY MODEL"** AND NOT BE OF AN ADVERSARIAL NATURE, NOR SHOULD THE ONUS BE ON THE INJURED WORKER TO PROVE HIS/HER CASE. ACCORDING TO SECTION 17 THE WORKER IS ENTITLED TO THE "BENEFIT OF THE DOUBT" AND IS NOT REQUIRED TO "ADDUCE CONCLUSIVE PROOF OF HIS RIGHT TO THE COMPENSATION APPLIED FOR". RATHER THAN HOLDING FORMAL "HEARINGS" PER SE, THE APPEAL PANEL SHOULD CONSIDER THAT IT IS INVOLVED IN A LESS FORMAL "ORAL ENQUIRY PROCESS" OR "APPEAL MEETING PROCESS".

(ii) THAT THE BURDEN OF PROOF RESIDES WITH THE BOARD.

(iii) THAT, UNLESS THERE IS EVIDENCE TO THE CONTRARY, THE PRESUMPTION THAT THE WORKER'S CLAIM IS JUSTIFIED SHOULD HOLD. THE EVIDENCE TO THE CONTRARY SHOULD BE OF SUCH WEIGHT AS TO GO BEYOND THE BALANCE OF PROBABILITIES.

(iv) THAT AN ORDER OR DECISION OF THE APPEAL BOARD IS FINAL AND CONCLUSIVE AND IS NOT OPEN TO QUESTION OR REVIEW, EXCEPT AS SET OUT IN RECOMMENDATION L-35(D)(i) HEREIN, IN A COURT OF LAW AND NO PROCEEDINGS BY OR BEFORE THE APPEAL BOARD SHALL BE RESTRAINED BY INJUNCTION, PROHIBITION OR OTHER PROCESS OR PROCEEDINGS IN A COURT OF LAW OR BE REMOVABLE BY CERTIORARI OR OTHERWISE INTO A COURT OF LAW (SOURCE: WORKERS' COMPENSATION ACT, NEWFOUNDLAND.)

(Z) (i) THAT, AND WE REITERATE, THE APPEAL PROCESS AT EVERY LEVEL SHALL BE OF AN INFORMAL NATURE AND THAT CLAIMANTS SHALL BE GIVEN EVERY OPPORTUNITY TO EXPRESS THEIR CONCERNS AND ASSERT THEIR CLAIMS IN AN ATMOSPHERE WHICH IS FREE FROM THE ADVERSARIAL PROCESS.

(ii) THAT THE APPEAL BOARD SHALL HAVE THE POWERS NECESSARY TO GARNER ALL THE FACTS, CALL WITNESSES, INVESTIGATE, ENQUIRE, AND AMEND, OR ALTER DECISIONS MADE EARLIER IN THE PROCESS.

(iii) THE APPEALS TRIBUNAL SHALL DETERMINE ITS OWN PRACTICE AND PROCEDURE AND MAY, SUBJECT TO THE APPROVAL OF THE BOARD OF GOVERNORS, MAKE RULES GOVERNING ITS PRACTICE AND PROCEDURE AND THE EXERCISE OF ITS POWERS AND MAY PRESCRIBE SUCH FORMS AS IT CONSIDERS NECESSARY.

(iv) THE BOARD OF GOVERNORS AFTER CONSULTATION WITH REPRESENTATIVES OF EMPLOYERS ORGANIZATIONS, WORKERS ORGANIZATIONS AND PHYSICIANS SHALL APPOINT QUALIFIED MEDICAL PRACTITIONERS, OTHER THAN PRACTITIONERS WHO ARE ALREADY

PROVIDING THEIR SERVICES TO THE BOARD IN OTHER AREAS OF ACTIVITY, TO A LIST; AND, THE APPEALS TRIBUNAL MAY OBTAIN THE ASSISTANCE OF ONE OR MORE OF THEM IN SUCH A WAY AND AT SUCH TIMES AS IT FINDS NECESSARY TO BETTER ENABLE IT TO DETERMINE ANY MATTER OF FACT IN QUESTION IN ANY APPEAL. A MEDICAL PRACTITIONER SHALL NOT BE ASKED TO ASSIST THE APPEALS TRIBUNAL IN ANY APPEAL WHERE THE PRACTITIONER HAS HAD ANY PREVIOUS INVOLVEMENT WITH THE MATTER OF APPEAL, HAS TREATED THE WORKER OF RECORD OR ANY MEMBER OF HIS/HER FAMILY OR HAD ANY DIRECT INVOLVEMENT WITH THE EMPLOYER OF RECORD.

RECOMMENDATION L-45

SECTION 38(1)

(A) (a) DELETE, "$900" IN THE SECOND LINE AND SUBSTITUTE WITH "$1500".

AND,

DELETE THE WORDS "NOT EXCEEDING $300" IN THE FOURTH AND FIFTH LINES.

(B) (b) DELETE "$500" IN THE SECOND LINE AND SUBSTITUTE WITH "$10,000".

AND,

DELETE "$450" IN THE SECOND LINE AND SUBSTITUTE WITH $550".

AND,

DELETE ALL WORDS AFTER "$550" IN THE SECOND LINE.

(C) (c) DELETE "$500" IN LINE TWO AND SUBSTITUTE WITH "$10,000".

AND

DELETE "$450" IN LINE THREE AND SUBSTITUTE WITH "$550".

AND

DELETE "$100" IN LINE FOUR AND SUBSTITUTE WITH "$150".

AND

DELETE ALL WORDS AFTER THE WORDS "UNDER THE AGE OF EIGHTEEN YEARS" IN LINE FOUR.

(D) (e) WHERE THE DEPENDANTS ARE CHILDREN, A LUMP SUM PAYMENT OF $10,000 SHALL BE PAID IN TRUST TO THE BOARD TO THE BENEFIT OF THE CHILDREN AND THEREAFTER A MONTHLY PAYMENT OF $150 TO EACH CHILD UNDER THE AGE OF EIGHTEEN YEARS.

(E) (f) DELETE "$60" AND "$80" WHERE THEY APPEAR IN THIS SECTION AND SUBSTITUTE WITH "$100" IN BOTH CASES.

RECOMMENDATION L-46

SECTION 39

(A) REPEAL SECTION 39(1)(a) and (b)

(B) AMEND SECTION 39(2) AND RE-NUMBER AS 39(1):

"UPON THE MARRIAGE OF A SPOUSE, WHO WAS NOT LEGALLY MARRIED TO THE DECEASED WORKER, RECEIVING COMPENSATION OR ENTITLED TO RECEIVE COMPENSATION UNDER THIS ACT, THE PROVISIONS OF THIS ACT APPLY WITH ALL NECESSARY MODIFICATIONS AS IF THAT PERSON WERE THE WIDOW OR WIDOWER OF THE DECEASED WORKER."

(C) AMEND SECTION 39(3) AND RE-NUMBER AS 39(2):

"A SPOUSE, WHO WAS NOT LEGALLY MARRIED TO THE DECEASED WORKER, RECEIVING OR ENTITLED TO RECEIVE COMPENSATION UNDER THE PROVISIONS OF THIS ACT MAY NOT BE PAID COMPENSATION FOR ACTING OR CLAIMING TO ACT AS A FOSTER PARENT TO THE CHILDREN OF THE DECEASED WORKER."

RECOMMENDATION L-47

SECTION 40(1)

IF A DEPENDENT WIDOW OR WIDOWER REMARRIES, THE RIGHT TO COMPENSATION UNDER CLAUSE 38(1), (b), (c), OR (d) SHALL CEASE, BUT SHE OR HE SHALL BE ENTITLED TO A PAY-OUT OF PENSION BENEFIT OF TWELVE TIMES THE MONTHLY PAYMENT IN EFFECT AT THAT TIME.

RECOMMENDATION L-48

(A) SECTION 41(3) WHERE UNDER SUBSECTION (1) PAYMENTS IN RESPECT OF A CHILD CEASE ON THE CHILD ATTAINING THE AGE OF EIGHTEEN YEARS, THE CHILD SHALL BE ENTITLED TO CONTINUE TO RECEIVE AN EDUCATION SUPPLEMENT AT THE RATE SET OUT IN CLAUSE 38(1)(c) OF THE ACT FOR PAYMENTS TO A CHILD IF HE IS A REGISTERED, FULL-TIME STUDENT AT AN EDUCATIONAL INSTITUTION, RECOGNIZED BY THE BOARD, WHETHER SUCH INSTITUTION IS LOCATED WITHIN OR OUTSIDE THE PROVINCE.

(B) SECTION 41(4) THE EDUCATION SUPPLEMENT REFERRED TO IN (3) SHALL CEASE WHEN THE YOUNG PERSON ATTAINS THE AGE OF TWENTY-ONE YEARS.

RECOMMENDATION L-49

A) THAT SUBSECTION 43(1) BE SUBSTITUTED FOR SUBSECTION 43(3);

B) THAT SUBSECTION 43(1), NOW APPEARING AS SUBSECTION 43(3) BE AMENDED TO READ:

> (3) "WITHOUT PREJUDICE TO SUBSECTION (1), WHERE PERMANENT PARTIAL DISABILITY RESULTS FROM THE INJURY THE COMPENSATION SHALL BE A WEEKLY OR OTHER PERIODICAL PAYMENT OF SEVENTY-FIVE PER CENT OF THE DIFFERENCE BETWEEN THE AVERAGE WEEKLY OR OTHER PERIODICAL EARNINGS OF THE WORKER BEFORE THE ACCIDENT AND THE AVERAGE AMOUNT WHICH HE IS EARNING OR IS ABLE TO EARN IN SOME SUITABLE EMPLOYMENT OR BUSINESS AFTER THE ACCIDENT AND SUCH COMPENSATION SHALL BE PAYABLE DURING THE LIFETIME OF THE WORKER.

C) THAT SUBSECTION 43(2) BE SUBSTITUTED AS SUBSECTION 43(4);

D) THAT SUBSECTION 43(4) BE SUBSTITUTED AS SUBSECTION 43(1) AND AMENDED AS FOLLOWS:

> (1) WHERE THE AMOUNT WHICH THE WORKER WAS EARNING BEFORE THE ACCIDENT HAS NOT BEEN DIMINISHED THE BOARD MAY PAY COMPENSATION WHERE SUCH WORKER HAS SUFFERED A PERMANENT INJURY WHICH, IN THE OPINION OF THE BOARD, *IS CAPABLE OF IMPAIRING HIS EARNING CAPACITY*.

E) THAT SUBSECTION 43(3) BE SUBSTITUTED AS SUBSECTION 43(2).

F) TO FURTHER ILLUSTRATE:

43(1): BECOMES 43(3) WITH AMENDMENT;

43(2): BECOMES 43(4);

43(3): BECOMES 43(2); AND,

43(4): BECOMES 43(1) WITH AMENDMENT.

RECOMMENDATION L-50

SECTION 44

(A) SECTION 44(3). DELETE, "$60" WHERE IT APPEARS IN LINE THREE AND SUBSTITUTE WITH "$100".

(B) SECTION 44(3). DELETE, "OR WHERE HIS AVERAGE EARNINGS ARE LESS THAN $60 PER WEEK, THE AMOUNT OF SUCH EARNINGS;".

(C) SECTION 44(4) - REPEAL.

RECOMMENDATION L-51

(A) THAT SECTION 45 OF THE ACT BE AMENDED TO PROVIDE A FORMULA FOR THE AUTOMATIC ANNUAL ADJUSTMENT OF THE MAXIMUM COMPENSABLE YEARLY SALARY (MCYS).

(B) THAT THE FORMULA BE AS FOLLOWS:

THE AVERAGE WEEKLY EARNINGS (INDUSTRIAL AGGREGATE) FOR P.E.I. AT JUNE 30 OF EACH YEAR, FOR THE PREVIOUS TWELVE MONTHS, AS PUBLISHED BY STATISTICS CANADA, EMPLOYMENT AND EARNINGS HOURS, 72-002, TABLES 2.1 AND 2.2, MULTIPLIED BY 1.5, ROUNDED TO THE NEAREST $1,000, EQUALS THE MCYS FOR THE CALENDAR YEAR COMMENCING JANUARY 1 OF EACH SUBSEQUENT YEAR.

PUT ANOTHER WAY: ANNUAL AVERAGE WEEKLY EARNINGS AT JUNE 30 × 1.5 = MCYS AT JANUARY 1 IN THE YEAR FOLLOWING.

(NOTE: USING JUNE 30 AS THE BASE DATE FOR THE CALCULATION ALLOWS FIVE (5) MONTHS NOTICE TO THE EMPLOYERS PRIOR TO IMPLEMENTATION.)

(C) IN RECOGNITION OF THE FACT THAT THE PRESENT MCYS ($23,000) IS SIGNIFICANTLY LESS THAN THE FORMULA WOULD PROVIDE, IF IT WERE PRACTICED PRESENTLY, THE COMMITTEE IS RECOMMENDING A CATCH-UP FEATURE, VIA A PHASING-IN APPROACH, SO AS TO ACHIEVE THE DESIRED MCYS BASE IN THREE YEARS, WE ESTIMATE.

THE AVERAGE WEEKLY WAGE FOR P.E.I. AT DECEMBER 31, 1989 WAS $396.85 (STATISTICS CANADA). THEREFORE THE AVERAGE ANNUAL WAGE IN P.E.I. AT DECEMBER 31, 1989 WAS $396.85 × 52 = $20, 636 × 1.5 = $31,000 (ROUNDED TO THE NEAREST $1,000) OR $8,000 ABOVE THE PRESENT DAY MCYS.

WE ARE RECOMMENDING THAT THE PRESENT DAY MCYS BE INCREASED BY INCREMENTS OF $4,000 PER YEAR, EFFECTIVE JANUARY 1 OF EACH YEAR, UNTIL THE IDENTIFIED MCYS IS ACHIEVED WE ESTIMATE IN 1993.

FOR EXAMPLE:

THE MCYS FOR 1991 WOULD BE $23,000 + $4,000 OR $27,000;

THE MCYS FOR 1992 WOULD BE $27,000 + $4,000 OR $31,000;

THE MCYS FOR 1993 WOULD BE $31,000 PLUS THE NECESSARY AMOUNT TO ACHIEVE THE MCYS AS PER THE RECOMMENDED FORMULA, i.e. ANNUAL AVERAGE WAGE AT JUNE 30, 1992 MULTIPLIED BY 1.5.

RECOMMENDATION L-52

THAT SECTION 46(1) AND (2) BE REPEALED.

RECOMMENDATION L-53

SECTION 47(9) PENALTY - EVERY EMPLOYER WHO FAILS TO GIVE ANY NOTICE, MAKE ANY REPORT OR TO FURNISH PARTICULARS OF ANY ACCIDENT OR CLAIM REQUIRED BY THIS SECTION, UNLESS EXCUSED BY THE BOARD ON THE GROUND THAT THE REPORT FOR SOME SUFFICIENT REASON COULD NOT HAVE BEEN MADE, IS LIABLE TO A PENALTY TO BE IMPOSED BY THE BOARD.

RECOMMENDATION L-54

THAT A NEW SECTION BE INCLUDED IN THE LEGISLATION WHICH SHOULD PROVIDE FOR AN ANNUAL ADJUSTMENT TO *ALL* ONGOING BENEFITS BEING PROVIDED BY THE WORKERS' COMPENSATION BOARD TO *ALL* INJURED WORKERS' AND/OR *ALL* DEPENDENTS OF DECEASED OR INJURED WORKERS. SUCH ADJUSTMENT SHALL TAKE AFFECT ON JANUARY 1 OF EACH YEAR AND SHALL BE EQUAL TO THE CONSUMER PRICE INDEX FOR CHARLOTTETOWN/SUMMERSIDE FOR THE TWELVE MONTH PERIOD EXPIRING ON DECEMBER 31 OF EACH PRECEEDING YEAR.

RECOMMENDATION L-55

SECTION 48(2):

IF AN INJURED WORKER WHO IS ENTITLED TO COMPENSATION IS COMMITTED TO A MENTAL INSTITUTION OR INCARCERATED IN ANY JAIL OR PRISON, COMPENSATION SHALL CONTINUE TO BE PAYABLE, HOWEVER THE BOARD MAY PAY ANY PART OF THE COMPENSATION TO ANY DEPENDENT OF THE INJURED WORKER OR TO SUCH PERSONS AS IN THE OPINION OF THE BOARD ARE BEST QUALIFIED IN ALL THE CIRCUMSTANCES TO ADMINISTER THE PAYMENTS OR THE BOARD MAY ADMINISTER THE PAYMENTS TO THE BENEFIT OF THE INJURED WORKER AND ANY DEPENDENTS.

NEVERTHELESS, A COMFORT ALLOWANCE OF 20% OF THE BENEFIT, TO A MAXIMUM OF $100.00, SHALL BE PAID OUT OF EACH PERIODIC PAYMENT FOR THE USE OF THE INJURED WORKER WHERE THE BENEFIT IS BEING ADMINISTERED BY ANOTHER.

RECOMMENDATION L-56

SECTION 50(2)

WHERE A CLAIM IS RE-OPENED AFTER TWO YEARS HAVE LAPSED FROM THE DATE OF THE ACCIDENT, THE BOARD, WHERE IT DETERMINES THAT AN INCREASE IN COMPENSATION IS JUSTIFIED, SHALL CONTINUE TO PAY THE INJURED WORKER THE COMPENSATION WHICH WAS AWARDED AT THE TIME OF THE ORIGINAL CLAIM; AND, IN ADDITION, SHALL PAY THE INJURED WORKER COMPENSATION ON THE IMPROVED PORTION OF THE RE-OPENED CLAIM, COMPUTED ON HIS AVERAGE

EARNINGS AT THE TIME OF THE RE-OPENING OF THE CLAIM ON THE SCALE AS PROVIDED BY THE ACT AT THE TIME OF THE RE-OPENING, OR SHALL PAY THE INJURED WORKER COMPENSATION COMPUTED ON HIS AVERAGE EARNINGS AT THE TIME OF THE ACCIDENT ON THE SCALE AS PROVIDED BY THE ACT AT THE TIME OF THE RE-OPENING, WHICHEVER IS OF GREATER BENEFIT TO THE INJURED WORKER.

RECOMMENDATION L-57

(A) SECTION 54(1) - ADD: "IN FIXING CLASSES, THE BOARD SHALL, IN SO FAR AS POSSIBLE, DESIGN THEM ON THE MODEL OF THE "STANDARD INDUSTRIAL CLASSIFICATION SYSTEM" AS PUBLISHED BY STATISTICS CANADA."

(B) SECTION 54(2) - THE BOARD MAY BY ITS POLICY OR BY-LAW REARRANGE SUCH CLASSES, AND TRANSFER ANY INDUSTRY TO ANY OTHER CLASS.

(C) SECTION 54(3) - FOLLOWING THE WORDS "CHIEF DEPARTMENT" IN LINE FOUR, DELETE THE WORDS, "OR MAY DIVIDE THE INDUSTRY INTO TWO OR MORE DEPARTMENTS, ASSIGNING EACH TO ITS PROPER CLASS."

RECOMMENDATION L-58

THAT SECTION 56(3) BE AMENDED TO PROVIDE SPECIFIC CRITERIA IN DETERMINING MERIT OR DEMERIT, AS THE CASE MIGHT BE.

(A) IN DETERMINING MERIT FOR PURPOSES OF A REBATE, THE BOARD SHALL TAKE INTO CONSIDERATION THE FOLLOWING CRITERIA:

(i) AN EMPLOYER SHALL APPLY FOR A MERIT REBATE ON A FORM SUPPLIED BY THE BOARD FOR SUCH PURPOSE.

(ii) UPON RECEIPT OF A REQUEST FOR A MERIT REBATE, THE BOARD SHALL REQUEST THAT AN AUDIT OF THE EMPLOYER'S HEALTH AND SAFETY PRACTICES SHALL BE CARRIED OUT BY OFFICIALS OF THE OCCUPATIONAL HEALTH AND SAFETY DIVISION OF THE DEPARTMENT OF LABOUR.

(iii) MERIT SHALL BE DETERMINED BASED ON THE FINDINGS OF THE AUDIT AND RELATED TO SUCH MATTERS AS: THE EXISTENCE OF AN OCCUPATIONAL HEALTH AND SAFETY COMMITTEE OR SAFETY OFFICERS AT THE EMPLOYERS WORK PLACE(S); THE EXISTENCE OF A

FORMAL HEALTH AND SAFETY TRAINING PROGRAM; THE PREVALENCE OF TRAINING IN A RECOGNIZED FIRST AID PROGRAM; FIRST AID EQUIPMENT AT HAND AND SO FORTH.

(iv) IN ADDITION, A TWO TO THREE YEAR PERIOD SHALL BE ASSESSED AS TO THE CLAIMS EXPERIENCE OF THE EMPLOYER. SUCH SHOULD SHOW AN APPRECIABLE DECREASE IN INCIDENTS OF CLAIMS OR ACCIDENTS.

(v) THE RANGE OF ANY REBATE SHALL NOT BE LESS THAN 5%, NOR GREATER THAN 10%, IN ANY YEAR AND THAT THE REBATE BE BASED ON THE ASSESSMENT OF THE EMPLOYER IN THAT YEAR.

(vi) THE ADOPTED MERIT SYSTEM PROGRAM SHOULD BE ACTUARILY SOUND AND THEREFORE THE BOARD'S ACTUARIES SHOULD BE INVOLVED IN ITS DEVELOPMENT.

(vii) ONLY THOSE EMPLOYERS WHO PAY AN ANNUAL ASSESSMENT OF $5,000.00 OR MORE, SHALL BE CONSIDERED FOR A MERIT REBATE.

(B) WHERE, AFTER INVESTIGATION, THE BOARD DETERMINES THAT:

(i) SUFFICIENT PRECAUTIONS ARE NOT TAKEN BY AN EMPLOYER FOR THE PREVENTION OF INJURIES AND INDUSTRIAL DISEASE,

(ii) THE WORKPLACE(S) OF THE EMPLOYER OR THE WORKING CONDITIONS ARE CONSISTENTLY UNSAFE,

(iii) THE EMPLOYER FAILS OR REFUSES TO COMPLY WITH ANY REGULATIONS, ORDERS OR DIRECTIVES ISSUED BY THE BOARD OR BY THE OCCUPATIONAL HEALTH AND SAFETY DIVISION, DEPARTMENT OF LABOUR,

THE BOARD MAY ASSESS AND LEVY ON THE EMPLOYER ANY ADDITIONAL ASSESSMENT DETERMINED BY THE BOARD AND MAY COLLECT THE ADDITIONAL ASSESSMENT IN THE SAME WAY AS AN ASSESSMENT IS COLLECTED. **OR**, THE BOARD MAY EXERCISE ITS RIGHTS UNDER ANY OTHER SECTION OF THE ACT IN THIS REGARD.

RECOMMENDATION L-59

SECTION 65(2) - THE PROVINCE OF PRINCE EDWARD ISLAND AND THE BOARD OF ASSESSORS FOR EVERY MUNICIPALITY SHALL YEARLY, WITHIN TEN DAYS AFTER THE COMPLETION OF THE ASSESSMENT ROLL, MAKE A RETURN TO THE BOARD UPON FORMS PROVIDED BY THE BOARD, SHOWING THE NAMES, ADDRESSES, NATURE OF BUSINESS, AND

USUAL NUMBER OF EMPLOYEES, IF KNOWN, OF ALL EMPLOYERS OR LABOR CARRYING ON ANY INDUSTRY OR BUSINESS OTHER THAN A FARMING OR MERCANTILE BUSINESS WITHIN THE JURISDICTION OF THE ASSESSOR, AND ANY OTHER INFORMATION THE BOARD MAY REQUIRE.

SECTION 65(3) - WITHIN THREE DAYS AFTER THE GRANTING OF ANY BUILDING PERMIT IN ANY MUNICIPALITY, WRITTEN NOTICE THEREOF SHALL BE GIVEN TO THE BOARD BY THE PERSON WHOSE DUTY IT IS TO KEEP A RECORD OF THE PERMITS.

RECOMMENDATION L-60

SECTION 66(2) - FAILURE TO COMPLY WITH ACT BY EMPLOYER, PENALTIES

ANY EMPLOYER WHO REFUSES OR NEGLECTS TO MAKE OR TRANSMIT ANY PAYROLL RETURN OR OTHER STATEMENT REQUIRED TO BE FURNISHED BY HIM UNDER SECTION 65, OR WHO REFUSES OR NEGLECTS TO PAY ANY ASSESSMENT, SPECIAL OR SUPPLEMENTARY ASSESSMENT, OR THE PROVISIONAL AMOUNT OF ANY ASSESSMENT, OR ANY INSTALMENT OR PART THEREOF, OR WHO REFUSES OR NEGLECTS TO REPORT TO THE BOARD HIS ESTIMATE OF PAYROLL SHALL, IN ADDITION TO ANY PENALTY OR OTHER LIABILITY TO WHICH HE MAY BE SUBJECT, PAY TO THE BOARD A PENALTY FOR EACH WEEK THAT THE RETURN PAYMENT OR REPORT IS NOT MADE AND THE PAYMENT OF SUCH AMOUNT OR AMOUNTS MAY BE ENFORCED IN THE SAME MANNER AS THE PAYMENT OF AN ASSESSMENT MAY BE ENFORCED, BUT THE AMOUNT PAYABLE UNDER THIS SUBSECTION DOES NOT EXCEED AN AMOUNT WHICH THE BOARD CONSIDERS JUST OR REASONABLE UNDER ALL THE CIRCUMSTANCES.

RECOMMENDATION L-61

SECTION 70(2) - OBSTRUCTION OF INSPECTION

EVERY PERSON WHO OBSTRUCTS OR HINDERS THE MAKING OF ANY INSPECTION OUTLINED IN SUBSECTION (1) OR WHO REFUSES TO PERMIT ANY SUCH INSPECTION TO BE MADE IS LIABLE ON SUMMARY CONVICTION TO A FINE AND IN DEFAULT OF PAYMENT TO IMPRISONMENT OR TO BOTH.

RECOMMENDATION L-62

SECTION 70(4) - WHERE AN ACCIDENT CAUSING INJURY TO A WORKER IN RESPECT OF WHICH COMPENSATION IS PAYABLE HAS OCCURRED AND WHERE, IN THE OPINION OF THE BOARD THE ACCIDENT WAS DUE ENTIRELY OR MAINLY TO THE FAILURE OF THE EMPLOYER TO COMPLY WITH THE DIRECTIONS OF THE OCCUPATIONAL HEALTH AND SAFETY DIVISION, DEPARTMENT OF LABOUR, OR OF THE BOARD OR THE REGULATIONS TO THIS ACT, THE BOARD MAY LEVY AND COLLECT FROM THE EMPLOYER AS A CONTRIBUTION TO THE ACCIDENT FUND, A SUM NOT EXCEEDING ONE-HALF THE AMOUNT OF THE COMPENSATION PAYABLE IN RESPECT OF THE INJURY, AND THE PAYMENT OF SUCH SUM MAY BE ENFORCED IN THE SAME MANNER AS THE PAYMENT OF AN ASSESSMENT.

RECOMMENDATION L-63

SECTION 61

ADD: NEVERTHELESS IN THE CASE OF EMPLOYMENT THAT IS OF A SEASONAL NATURE, IN THAT IT DOES NOT OPERATE AS A YEAR ROUND EMPLOYMENT GENERALLY, THE BOARD MAY ONLY COLLECT ASSESSMENTS HALF YEARLY OR QUARTERLY AS IT MAY DETERMINE NECESSARY.

INTEREST ASSESSED AGAINST DELINQUENT PAYMENTS SHALL NOT EXCEED THE PRIME BANK RATE PLUS 2%.

RECOMMENDATION L-64

SECTION 62 (2)

DELETE "$100" IN LINE SIX AND SUBSTITUTE WITH "$1000".

RECOMMENDATION L-65

(A) THAT SECTION 71 BE REPEALED.

(B) THAT A NEW SECTION, CAPTIONED "ACCESS TO BOARD FILES ON INJURED WORKERS", BE SUBSTITUTED AND CONTAIN THE FOLLOWING PRINCIPLES:

(i) UPON THE WRITTEN REQUEST OF AN INJURED WORKER OR HIS/HER REPRESENTATIVE, THE BOARD SHALL PROVIDE FULL ACCESS, INCLUDING COPIES, TO HIS/HER BOARD FILE. IN THE CASE OF DECEASED WORKERS, FULL ACCESS TO BOARD FILES SHALL BE GRANTED UPON THE WRITTEN REQUEST OF PERSON(S) WHO MAY BE ENTITLED TO BENEFITS UNDER THE ACT, OR THEIR REPRESENTATIVES.

(ii) ACCESS TO BOARD FILES SHALL BE LIMITED TO OCCASIONS WHERE THERE IS AN ISSUE IN DISPUTE. FISHING EXPEDITIONS SHOULD BE DISALLOWED.

(iii) WHERE, IN THE OPINION OF THE BOARD, THE FILE OF A WORKER CONTAINS MEDICAL OR OTHER INFORMATION, THAT WOULD BE HARMFUL TO THE WORKER, IF PROVIDED TO THE WORKER, THE BOARD SHALL PROVIDE COPIES OF SUCH INFORMATION TO A PHYSICIAN OF THE WORKERS CHOICE, WHO, IN TURN, MAY DISCUSS (AND DISCLOSE) SUCH INFORMATION WITH THE WORKER.

(iv) WHERE THERE IS AN ISSUE IN DISPUTE AND UPON WRITTEN REQUEST, THE BOARD SHALL PROVIDE COPIES OF SUCH MEDICAL INFORMATION TO THE EMPLOYER THAT IS PERTINENT TO THE DISPUTE AT ISSUE, AS THE BOARD MAY CONSIDER TO BE RELEVANT TO THAT ISSUE IN DISPUTE. ONLY THAT INFORMATION THAT IS SPECIFICALLY SET OUT IN THE WRITTEN REQUEST AND WHICH IS RELEVANT TO THE SPECIFIC ISSUE AT DISPUTE SHALL BE DISCLOSED TO THE EMPLOYER OR THE EMPLOYER'S REPRESENTATIVE, AS THE CASE MAY BE.

(v) THE BOARD SHALL PROVIDE FOR A STANDARD FORM THAT MUST BE USED BY EMPLOYERS WHEN THEY ARE SEEKING ACCESS TO INFORMATION IN AN EMPLOYEE'S FILE. THE FORM SHALL CLEARLY ESTABLISH THAT ONLY SUCH INFORMATION THAT IS RELEVANT TO THE MATTER IN DISPUTE MAY BE DISCLOSED AND THE EMPLOYER MUST CLEARLY ESTABLISH, IN THE WRITTEN REQUEST, THE RELEVANCY OF THE INFORMATION SOUGHT TO THE CASE AT DISPUTE.

(vi) UPON RECEIPT OF A WRITTEN REQUEST FOR ACCESS TO A WORKERS FILE, THE BOARD SHALL IMMEDIATELY NOTIFY THE WORKER INVOLVED OR HIS/HER REPRESENTATIVE. SUCH NOTIFICATION SHALL CONTAIN A COPY OF THE EMPLOYER'S WRITTEN REQUEST. THE WORKER, OR HIS/HER REPRESENTATIVE MAY RAISE AN OBJECTION, WITH REASONS, THAT THE INFORMATION BEING SOUGHT SHOULD NOT BE DISCLOSED.

(vii) THE BOARD, WHETHER IT RECEIVES A WORKER'S WRITTEN OBJECTION OR NOT, SHALL INITIALLY ISSUE A "NOTICE OF DECISION"

WHICH IS A PRELIMINARY DECISION OF ITS' INTENT, ON THE EMPLOYER'S REQUEST, TO DISCLOSE TO THE EMPLOYER OR NOT TO DISCLOSE TO THE EMPLOYER, THE SPECIFIC INFORMATION REQUESTED. THIS "NOTICE OF DECISION" WILL BE FORWARDED TO THE PARTIES WHO SHALL BE PROVIDED A PRE-DETERMINED TIME FRAME WITHIN WHICH THEY MAY RAISE AN APPEAL TO THAT DECISION OF INTENT AND NO DISCLOSURE OF ANY INFORMATION SHALL BE MADE UNTIL THE EXPIRY OF THE PRE-DETERMINED TIME FRAME OR UNTIL THE APPEALS BOARD GIVES ITS DECISION, WHICHEVER OCCURS LATER.

(viii) ALL DECISIONS OF THE BOARD RELATED TO ACCESSING INFORMATION IS APPEALABLE TO THE APPEALS BOARD UNDER THE ACT. THE DECISION OF THE APPEALS BOARD IS FINAL AND BINDING ON THE PARTIES.

(ix) WORKERS, EMPLOYERS OR THEIR REPRESENTATIVES SHALL BE BOUND BY A "NON-DISCLOSURE AGREEMENT" THAT SHALL FORBID THE USE OF ANY INFORMATION DISCLOSED TO THEM BY THE BOARD, 1) FOR PURPOSES OTHER THAN THE DISPUTE AT HAND; 2) IT CANNOT BECOME PART OF ANY PERSONNEL FILE; 3) IT IS AN OFFENCE UNDER THE ACT (WITH STIFF PENALTIES) TO USE THE INFORMATION FOR ANY OTHER PURPOSE THAN STATED IN THE ORIGINAL REQUEST FOR INFORMATION AND FOR ANY OTHER PURPOSE THAN FOR AN APPEAL UNDER THE ACT.

RECOMMENDATION L-66

SECTION 72 - WHERE ANY WORK WITHIN THE SCOPE OF THIS PART IS PERFORMED UNDER CONTRACT FOR ANY MUNICIPALITY OR PUBLIC SERVICE COMMISSION, ANY ASSESSMENT IN RESPECT OF THE WORK MAY, AT THE DISCRETION OF THE BOARD, BE PAID BY THE CORPORATION OR COMMISSION, AND THE AMOUNT OF THE ASSESSMENT DEDUCTED FROM ANY MONEYS DUE THE CONTRACTOR IN RESPECT OF THE WORK.

RECOMMENDATION L-67

SECTION 75

(A) EVERY EMPLOYER WHO IS ASSESSED ANY ASSESSMENT UNDER THIS ACT IS DEEMED TO HOLD THE SAME IN TRUST FOR THE WORKERS' COMPENSATION BOARD AND FOR THE PAYMENT OVER OF THE SAME IN THE

MANNER AND AT THE TIME PROVIDED UNDER THIS ACT, AND THE AMOUNT, UNTIL PAID, FORMS A LIEN AND CHARGE ON HIS ENTIRE ESTATE OR ON THE ENTIRE ASSETS OF HIS ESTATE IN THE HANDS OF ANY TRUSTEE, AND SUCH LIEN OR CHARGE HAS PRIORITY OVER ALL OTHER CLAIMS OF ANY PERSON SUBJECT ONLY TO TAXES.

(B) THE AMOUNT OF THE ASSESSMENT ON AN EMPLOYER SHALL BE DEEMED TO BE HELD SEPARATE FROM AND FORM NO PART OF THE ESTATE OR ASSETS OF THE EMPLOYER, WHETHER OR NOT THE AMOUNT OF ASSESSMENT HAS IN FACT BEEN KEPT SEPARATE AND APART FROM THE ESTATE OR ASSETS OF THE EMPLOYER.

RECOMMENDATION L-68

(A) SECTION 79(3) - THE BOARD MAY MAKE AN ALLOWANCE TO ANY ASSOCIATION TO MEET ANY EXPENSES OF THE ASSOCIATION AND PAY THE ALLOWANCE OUT OF THE ACCIDENT FUND AND THE BOARD MAY RECOVER SUCH COSTS BY LEVYING A SPECIAL ASSESSMENT AGAINST THE CLASS, SUBSECTION OR GROUP FOR WHOSE BENEFIT THE ALLOWANCE IS PAID.

(B) SO AS TO OFFSET THOSE MAJOR CONCERNS AS RAISED BY THE HONOURABLE MISTER JUSTICE ROACH IN HIS REPORT AND OF WHICH THIS COMMITTEE HOLDS SOME CONCERN, WE STRONGLY SUGGEST THAT THE WORKERS' COMPENSATION BOARD WHEN IT IS REQUESTED TO APPROVE THE CONSTITUTION OF ANY ASSOCIATION, AS REQUIRED BY SECTION 1(C) OF THE ACT, AND APPROVES THE ASSOCIATION'S RULES, AS REQUIRED BY SECTION 79(1) OF THE ACT, REQUIRES THAT THE CONSTITUTION AND RULES CONTAIN THE FOLLOWING PROVISIONS:

1) PROVIDE FOR THE ACTIVE PARTICIPATION IN ACCIDENT PREVENTION PROGRAMS BY WORKERS;

2) PROVIDE FOR THE NEED TO HAVE THE WORKERS' COMPENSATION BOARD APPROVE ALL BUDGETS OF THE ASSOCIATION;

3) PROVIDE FOR THE NEED TO HAVE THE WORKERS' COMPENSATION BOARD APPROVE ALL PROGRAMS RELATED TO ACCIDENT PREVENTION AS PROPOSED BY THE ASSOCIATION;

4) PROVIDE FOR THE NEED TO FORMALIZE A CODE OF ACCIDENT PREVENTION REGULATIONS WHICH SHALL MEET THE APPROVAL OF THE WORKERS' COMPENSATION BOARD; AND

5) PROVIDE FOR THE NEED TO MAKE REGULAR REPORTS TO THE WORKERS' COMPENSATION BOARD ON ALL ASSOCIATION ACTIVITIES.

RECOMMENDATION L-69

SECTION 80 - INDUSTRIAL DISEASES

(A) SECTION 80(1) - (i) DELETE THE WORDS "CONTRACTED AFTER THE DISEASE WAS DECLARED TO BE AN INDUSTRIAL DISEASE" IN LINES ONE AND TWO.

(ii) DELETE THE WORDS "WITHIN TWELVE MONTHS" IN LINE FOUR.

(B) SECTION 80(2) - WHERE THE BOARD IS SATISFIED THAT THE INDUSTRIAL DISEASE IS DUE TO EMPLOYMENT OUTSIDE OF THE PROVINCE OF PRINCE EDWARD ISLAND THE BOARD MAY DENY THE CLAIM AND NO COMPENSATION WOULD BE PAYABLE UNDER THIS SECTION.

(C) SECTION 80(5) - REPEAL

(D) SECTION 80(6) - REPEAL

(E) THAT THE SCHEDULE OF INDUSTRIAL DISEASES BE UPGRADED AND REVISED AT REGULAR INTERVALS SO AS TO REFLECT MEDICAL FINDINGS, FROM TIME TO TIME, THAT CONCLUDE PROBABLE CONNECTION EXISTS *BETWEEN* A DISEASE AND AN EMPLOYMENT.

(F) (i) THAT AN "INDUSTRIAL DISEASE PANEL" BE ESTABLISHED WITHIN THE OCCUPATIONAL HEALTH AND SAFETY DIVISION OF THE DEPARTMENT OF LABOUR.

(ii) THAT THE PANEL SHALL BE COMPOSED OF NOT MORE THAN SEVEN MEMBERS REPRESENTATIVE OF THE PUBLIC, SCIENTIFIC, TECHNICAL, AND PROFESSIONAL COMMUNITIES.

(iii) THE MEMBERS OF THE PANEL SHALL INCLUDE A REPRESENTATIVE OF THE OCCUPATIONAL HEALTH AND SAFETY DIVISION, DEPARTMENT OF LABOUR; THE BOARD MEDICAL CONSULTANT, WORKERS' COMPENSATION BOARD; AND FIVE OTHER PERSONS APPOINTED BY THE LIEUTENANT GOVERNOR IN COUNCIL, ONE OF WHOM SHALL BE REPRESENTATIVE OF WORKERS AND ONE OF WHOM SHALL BE REPRESENTATIVE OF EMPLOYERS.

(iv) THE LIEUTENANT GOVERNOR IN COUNCIL SHALL DESIGNATE ONE OF THE MEMBERS AS CHAIRPERSON AND ANOTHER MEMBER AS VICE-CHAIRPERSON.

(v) THE REMUNERATION, BENEFITS AND ALLOWANCES OF THE MEMBERS OF THE PANEL SHALL BE AS DETERMINED BY THE LIEUTENANT GOVERNOR IN COUNCIL.

(vi) IT SHOULD BE THE FUNCTION OF THE PANEL TO:

a) INVESTIGATE POSSIBLE INDUSTRIAL DISEASES,

b) TO MAKE FINDINGS AS TO WHETHER A PROBABLE CONNECTION EXISTS BETWEEN A DISEASE AND AN INDUSTRIAL PROCESS, TRADE OR OCCUPATION,

c) TO CREATE, DEVELOP AND REVISE CRITERIA FOR THE EVALUATION OF CLAIMS RESPECTING INDUSTRIAL DISEASES,

d) TO ADVISE ON ELIGIBILITY RULES REGARDING COMPENSATION FOR CLAIMS RESPECTING INDUSTRIAL DISEASES.

e) THE PANEL SHALL MEET IN RESPONSE TO A SPECIFIC REQUEST FROM THE BOARD WITH REGARD TO (vi) a), b), c), AND d) ABOVE; NEVERTHELESS, THE PANEL SHOULD MEET AT LEAST ONCE A YEAR TO DISCUSS DEVELOPING TRENDS AND TO ADVISE THE BOARD WHERE THE PANEL MAY FEEL IT IS APPROPRIATE.

RECOMMENDATION L-70

WORKERS' ADVOCATE

A) FOLLOWING IMPLEMENTATION OF THE COMMITTEE'S RECOMMENDATIONS AS RELATED TO RE-ORGANIZATION, STAFF TRAINING, APPEAL PROCEDURE, PUBLISHING POLICY AND PRACTICES, AND ACCESSIBILITY TO INFORMATION, WE ARE RECOMMENDING A REVIEW TO DETERMINE THE AFFECT AND ANY LINGERING NECESSITY FOR CREATING THE OFFICE OF WORKERS' ADVOCATE.

B) WE RECOMMEND THAT SUCH REVIEW SHOULD BE CARRIED OUT NO LATER THAN THREE (3) YEARS HENCE, i.e. THE FALL OF 1993.

C) THE REVIEW COMMITTEE SHOULD BE COMPRISED OF EQUAL NUMBERS OF WORKER AND EMPLOYER REPRESENTATIVES WITH A NEUTRAL CHAIRPERSON.

D) SHOULD THIS REVIEW COMMITTEE DETERMINE THAT THE OFFICE OF WORKERS' ADVOCATE IS APPROPRIATE, THEN WE WOULD RECOMMEND THE FOLLOWING BE WRITTEN INTO THE LEGISLATION:

E) WORKERS' ADVOCATES

(i) THE LIEUTENANT GOVERNOR IN COUNCIL MAY APPOINT WORKERS' ADVOCATES.

(ii) THE WORKERS' ADVOCATES SHALL BE PAID REMUNERATION FIXED BY THE LIEUTENANT GOVERNOR IN COUNCIL, AND ACTUAL AND REASONABLE EXPENSES INCURRED BY THEM IN THE DISCHARGE OF THEIR DUTIES.

(iii) ALL MONEY REQUIRED TO BE PAID UNDER SUBSECTION (ii) SHALL BE PAID BY THE GOVERNMENT, BUT THE WORKERS' COMPENSATION BOARD SHALL REIMBURSE THE GOVERNMENT FOR ALL AMOUNTS SO PAID WHEN REQUESTED BY THE MINISTER.

(iv) ON RECEIVING A REQUEST UNDER SUBSECTION (iii), THE WORKERS' COMPENSATION BOARD SHALL, OUT OF THE ACCIDENT FUND, PAY THE AMOUNT REQUESTED TO THE MINISTER OF FINANCE.

(v) NOTWITHSTANDING THE CIVIL SERVICE ACT, THE MINISTER MAY ENTER INTO CONTRACTS AND AGREEMENTS TO PROVIDE FOR THE FACILITIES, EQUIPMENT AND STAFF NECESSARY FOR THE EFFICIENT PERFORMANCE OF THE DUTIES OF THE WORKERS' ADVOCATES.

(vi) THE WORKERS' ADVOCATE NEED NOT BE MEMBERS OF THE LAW SOCIETY OF PRINCE EDWARD ISLAND, AND IF ONE OF THEM IS NOT, HE SHALL NOT BE BARRED FROM REPRESENTING ANY WORKER IN HIS ROLE OF WORKERS' ADVOCATE.

(F) A WORKERS' ADVOCATE SHALL

(i) GIVE ASSISTANCE TO A WORKER OR TO A DEPENDANT HAVING A CLAIM UNDER THIS ACT, EXCEPT WHERE THE WORKERS' ADVOCATE THINKS THE CLAIM HAS NO MERIT,

(ii) ON CLAIMS MATTERS, COMMUNICATE WITH OR APPEAR BEFORE THE BOARD, REVIEW BOARD OR ANY OTHER TRIBUNAL ESTABLISHED BY OR UNDER THIS ACT ON BEHALF OF A WORKER OR DEPENDANT WHERE THE ADVISER CONSIDERS ASSISTANCE IS REQUIRED, AND

(iii) ADVISE WORKERS AND DEPENDANTS WITH REGARD TO THE INTERPRETATION AND ADMINISTRATION OF THIS ACT OR ANY REGULATIONS OR DECISIONS MADE UNDER IT.

(G) CONFIDENTIALITY

(i) WORKERS' ADVOCATES AUTHORIZED TO MAKE EXAMINATIONS OR INQUIRIES UNDER THIS PART SHALL NOT DIVULGE OR ALLOW TO BE DIVULGED, EXCEPT IN THE PERFORMANCE OF THEIR DUTIES OR

UNDER THE AUTHORITY OF THE BOARD, INFORMATION OBTAINED BY THEM OR WHICH HAS COME TO THEIR KNOWLEDGE IN MAKING OR IN CONNECTION WITH AN EXAMINATION OR INQUIRY UNDER THIS PART.

(ii) EVERY PERSON WHO VIOLATES SUBSECTION (i) COMMITS AN OFFENCE AGAINST THIS PART.

(iii) THE WORKERS' ADVOCATE, AND THEIR STAFF SHALL HAVE ACCESS AT ANY REASONABLE TIME TO THE COMPLETE CLAIMS FILES OF THE BOARD AND ANY OTHER MATERIAL PERTAINING TO THE CLAIM OF AN INJURED OR DISABLED WORKER; BUT THE INFORMATION CONTAINED IN THOSE FILES SHALL BE TREATED AS CONFIDENTIAL TO THE SAME EXTENT AS IT IS SO TREATED BY THE BOARD.

RECOMMENDATION L-71

THAT THE FOLLOWING CLAUSE BE INCORPORATED INTO THE ACT:

(A) WITH A VIEW TO AVOIDING DUPLICATION OF ASSESSMENTS TO WHICH AN EMPLOYER MAY BE LIABLE ON THE EARNINGS OF WORKERS WHO ARE EMPLOYED PART OF THE TIME IN PRINCE EDWARD ISLAND AND PART OF THE TIME IN ANOTHER PROVINCE OR TERRITORY OF CANADA, THE BOARD MAY MAKE AN AGREEMENT WITH THE WORKERS' COMPENSATION AUTHORITY OF THAT PROVINCE OR TERRITORY FOR SUCH ADJUSTMENT OF ASSESSMENTS AS IS EQUITABLE AND MAY REIMBURSE SUCH OTHER AUTHORITY FOR ANY PAYMENT OF COMPENSATION, REHABILITATION OR HEALTH CARE MADE BY IT UNDER SUCH AGREEMENT, AND MAY, IN ORDER TO GIVE EFFECT TO ANY SUCH AGREEMENT, RELIEVE ANY SUCH EMPLOYER FROM ASSESSMENT OR REDUCE THE AMOUNT THEREOF.

(B) WHERE BY THE LAW OF THE COUNTRY OR PLACE IN WHICH THE ACCIDENT HAPPENS THE WORKER IS OR HIS DEPENDANTS ARE ENTITLED TO COMPENSATION IN RESPECT OF IT, THEY SHALL BE BOUND TO ELECT WHETHER THEY WILL CLAIM COMPENSATION UNDER THE LAW OF SUCH COUNTRY OR PLACE OR UNDER THIS PART AND TO GIVE NOTICE OF SUCH ELECTION, AND, IF SUCH ELECTION IS NOT MADE AND NOTICE GIVEN, IT SHALL BE PRESUMED THAT THEY HAVE ELECTED NOT TO CLAIM COMPENSATION UNDER THIS PART.

(C) NOTICE OF THE ELECTION, WHERE THE COMPENSATION UNDER THIS PART IS PAYABLE BY THE EMPLOYER INDIVIDUALLY, SHALL BE GIVEN TO THE EMPLOYER AND, WHERE THE COMPENSATION IS PAYABLE OUT OF THE ACCIDENT FUND, TO THE BOARD, AND SHALL BE

GIVEN IN BOTH CASES WITHIN THREE MONTHS AFTER THE HAPPENING OF THE ACCIDENT OR, IN CASE IT RESULTS IN DEATH, WITHIN THREE MONTHS AFTER THE DEATH OR WITHIN SUCH LONGER PERIOD AS EITHER BEFORE OR AFTER THE EXPIRATION OF SUCH THREE MONTHS THE BOARD MAY ALLOW.

RECOMMENDATION L-72

SCHEDULE OF DISEASES

ALLERGIC ALVEOLITIS (HYPERSENSITIVITY PNEUMONITIS)

ASBESTOSIS

OCCUPATIONAL ASTHMA

BYSSINOSIS

COMPRESSION/DECOMPRESSION SICKNESS (CAISSON DISEASE)

OCCUPATIONAL CANCER

ALLERGIC CONTACT DERMATITIS

DERMATOSES

FROSTBITE - HYPOTHERMIA

HEAT STROKE - HYPERTHERMIA

HEARING LOSS- NOISE INDUCED

HEART ATTACK

OCCUPATIONAL INFECTIOUS DISEASES

OCCUPATIONAL PARASITIC DISEASES

METAL FUME FEVER

PNEUMOCONIOSIS

POISONINGS CAUSED BY - AROMATIC HYDROCARBONS
- ARSENIC
- BERYLLIUM
- NICKEL
- CADMIUM

- CARBON MONOXIDE
- CHLORINATED HYDROCARBONS
- CHLORINE
- CHROMIUM
- CYANIDE
- FLUORINE
- LEAD
- MERCURY
- NITROGEN OXIDE
- ORGANIC SOLVENTS
- PHOSPHOROUS
- ORGANIC PHOSPHOROUS COMPOUNDS
- PESTICIDES

RADIATION CAUSED ILLNESSES - IONIZING AND NON-IONIZING

SILICOSIS

SIDEROSIS

STRESS RELATED TO PSYCHOLOGICALLY TRAUMATIC INCIDENT

TENCOSYNOVITIS, TENDONITIS

VIBRATION DISABLEMENT (VWF, REYNAUD'S SYNDROME)

REPETITIVE STRESS INJURY

RECOMMENDATION L-73

FOR VIOLATIONS TO THE PROVISIONS OF THE FOLLOWING SECTIONS OF THE ACT WE ARE RECOMMENDING THE FOLLOWING FINES AND PENALTIES:

(A) SECTION 18(6) - A FINE TO A MAXIMUM OF $500.00 FOR EACH OCCASION;

(B) SECTION 47(9) - A MINIMUM FINE OF $50.00 PER DAY FOR EACH DAY THE FAILURE CONTINUES UP TO A MAXIMUM OF $500.00 PER DAY;

(C) SECTION 66(2) - A FINE OF $100.00 FOR EACH WEEK THAT THE RETURN PAYMENT OR REPORT IS NOT MADE;

(D) SECTION 70(2) - A MINIMUM FINE OF $500.00 TO A MAXIMUM OF $5,000.00.

RECOMMENDATION P-74

THE BOARD SHOULD DO A MUCH BETTER JOB IN COMMUNICATING TO ITS' PARTNERS, i.e. WORKERS AND EMPLOYERS ALIKE AND TO THE PUBLIC, THE NATURE OF THE WORKERS' COMPENSATION BOARD'S ORGANIZATION PROCESSES AND PROBLEMS. THROUGH GREATER UNDERSTANDING IT IS HOPED TO GENERATE MORE ACCEPTANCE OF THE BOARD'S ROLE AND ITS EFFORTS IN SOLVING THE DIFFICULT PROBLEMS FACED BY INJURED WORKERS, THEIR DEPENDENTS AND EMPLOYERS.

RECOMMENDATION P-75

THE BOARD SHOULD, AS A FIRST STEP, BE PREPARED TO ADDRESS ITSELF TO THE FUTURE AGENDA OF RE-ORGANIZATION AND NEW OPERATING PRINCIPLES, WHICH MUST BE MARKED BY A NEW OPENNESS.

IN PLANNING FOR THE NEW AGENDA, THE INITIAL STEP WOULD BE TO PROMULGATE A *MISSION STATEMENT* FOR THE BOARD WITH ITS' FOCUS BEING ON SERVICE DELIVERY, FINANCIAL SOUNDNESS, PUBLIC UNDERSTANDING AND RESPONSIBLE ADMINISTRATION.

RECOMMENDATION P-76

OVER A REASONABLE TIME FRAME, THE BOARD SHOULD FORMULATE A COMPREHENSIVE STRATEGIC PLAN FOR MEETING THE OBJECTIVES WHICH IT HAS LAID OUT IN ITS *MISSION STATEMENT* IN AN OPERATIONAL MANNER. THEREAFTER, ONGOING EVALUATIONS, WITH INPUT FROM PARTNERS, SHOULD BE CONDUCTED AND WILL, HOPEFULLY, DEMONSTRATE THE EFFECTIVENESS OF THE RE-ORGANIZATION STRUCTURES AND APPROACHES TO MEET THE NEEDS INTO THE FUTURE.

RECOMMENDATION P-77

THE FOLLOWING RECOMMENDATIONS ARE SPECIFIC WITH REGARD TO THE DEVELOPMENT OF POLICY AND PRACTICE AND ITS' PROMULGATION:

A) A FORM DOCUMENT SHOULD BE DEVELOPED AND USED IN PRESENTING ALL PROPOSED POLICY AND PRACTICE TO THE BOARD OF GOVERNORS FOR ITS' APPROVAL.

SUCH DOCUMENT SHOULD CONTAIN, IN ITS HEADING, SUFFICIENT SPACE TO ILLUSTRATE THE FOLLOWING INFORMATION: SUBJECT, SOURCE DIVISION, CERTIFICATION OF DIRECTOR OF SOURCE DIVISION, CERTIFICATION OF CHIEF EXECUTIVE OFFICER OR CHIEF APPEAL COMMISSIONER, BOARD MINUTE DATE, POLICY NO., EFFECTIVE DATE, CERTIFICATION OF CHAIRMAN, DISTRIBUTION.

B) THE PROPOSED POLICY/PRACTICE SHOULD BE WRITTEN IN VERY CLEAR AND UNDERSTANDABLE LANGUAGE. SPECIAL CARE MUST BE GIVEN TO ENSURING THAT WORKERS AND EMPLOYERS SHALL HAVE LITTLE TROUBLE IN INTERPRETING THE POLICY STATEMENT.

C) THE PROPOSED POLICY/PRACTICE MUST BE ACCOMPANIED WITH A CLEAR STATEMENT WITH REGARD TO WHY THE POLICY/PRACTICE IS DEEMED NECESSARY AND AN EXPLANATION OF ITS BENEFITS, AS WELL AS ANY NEGATIVE POTENTIALS WHICH MAY ARISE OR RESULT FROM THE IMPOSITION OF THE POLICY.

D) UPON RECEIVING BOARD APPROVAL TO IMPLEMENT SUCH POLICY/PRACTICE, THE WRITTEN POLICY SHALL BE MAINTAINED IN A CENTRAL FILE WHERE IT MAY BE RETRIEVED WHENEVER NECESSARY. SUCH FILE SHALL BE MAINTAINED AND UP-DATED FROM TIME-TO-TIME AS POLICY IS DEVELOPED, AMENDED OR RESCINDED.

E) WRITTEN POLICY/PRACTICE SHALL ALSO BE PUBLISHED AND MADE AVAILABLE UPON REQUEST OR OTHERWISE CIRCULATED AS DEEMED NECESSARY AND APPROPRIATE UNDER THE CIRCUMSTANCES AND NATURE OF THE POLICY.

F) ALL POLICY AND PRACTICE SHALL BE ACCESSABLE BY THE PARTNERS.

G) ALL EXISTING POLICY AND PRACTICE SHOULD BE UPDATED AND RE-APPROVED BY THE BOARD, AS A LOT OF NECESSARY INFORMATION, e.g. DATE OF APPROVAL AND RATIONALE, IS MISSING OR LOST OVER THE YEARS.

RECOMMENDATION P-78

THE POLICY AND PRACTICE REFERENCED HEREIN MAY BE FOUND IN APPENDIX "H" ATTACHED HERETO AND IN THE ORDER REFERENCED HERE.

1) *POLICY ON REGISTRATION OF EMPLOYERS*:

THE USE OF THE WORD "ASSUME" IN THE SECOND PARAGRAPH IS TOO TENTATIVE AND DOES NOT REFLECT THE NECESSARY DETERMINATION THAT THE EMPLOYER IS OPERATING OR IS NOT OPERATING AND WE WOULD RECOMMEND THAT SUCH WORDING AS THE FOLLOWING BE UTILIZED INSTEAD: "WHEN IT IS DETERMINED THAT THE PERSON(S) ARE NOT EMPLOYERS, THE BOARD SHALL DISCONTINUE CORRESPONDENCE BUT SHALL MAINTAIN ON FILE ALL PREVIOUS CORRESPONDENCE FOR POTENTIAL FUTURE REFERENCE."

THIS TENTATIVE WORDING STYLE IS TO BE FOUND IN OTHER WRITTEN POLICY AND WE WOULD RECOMMEND THAT THE BOARD REVERT TO A CERTAIN AND PRECISE STYLE IN WRITING ITS' POLICY IN THE FUTURE.

AS WELL, THIS POLICY SHOULD CLEARLY SET OUT THE ESTABLISHED PROCESS OF COLLECTING OUTSTANDING ASSESSMENTS AND REFERENCE THE THREE STAGES WHICH THE BOARD FOLLOWS IN ATTEMPTING TO COLLECT SUCH MONIES, i.e. (1) CORRESPONDENCE AND TELEPHONE; (2) LAWYERS LETTER AND (3) FILE A JUDGEMENT.

2) *POLICY ON CLASSIFICATION*:

IN RECOMMENDATION L-57 WE MAKE A SPECIFIC RECOMMENDATION THAT THE BOARD SHOULD NOT "DIVIDE OR SPLIT" AN INDUSTRY INTO MORE THAN ONE CLASS. THIS POLICY SHOULD BE UP-DATED TO ESTABLISH THIS PRACTICE IN THE FUTURE.

3) *POLICY ON EMPLOYERS COVERAGE*:

PARAGRAPH TWO OF THIS POLICY SHOULD, IN FACT, BE THE OPENING PARAGRAPH AS IT ESTABLISHES THE FACT THAT SUCH COVERAGE, AS A FIRST STEP, MUST BE REQUESTED BY THE INDIVIDUAL SEEKING THE COVERAGE.

IN ADDITION, WE WOULD ENCOURAGE THE BOARD TO REFRAIN FROM USING SUCH POSSESIVE PRONOMINAL ADJECTIVES IN ITS' POLICY AS ILLUSTRATED HERE IN THE SECOND PARAGRAPH, i.e. "OUR". IT WOULD BE MORE PRECISE, CLEAR AND UNDERSTANDABLE TO CONSISTENTLY REFER TO THE "BOARD" IN SUCH CIRCUMSTANCES.

4) *POLICY ON EMPLOYERS COVERAGE PRO-RATE ASSESSMENT*:

THE SECOND PARAGRAPH OF THIS POLICY IS AN EXCELLENT ILLUSTRATION OF OUR CONCERN OF THE USE OF CONVOLUTED AND DIFFICULT TO UNDERSTAND LANGUAGE. SUCH IS NEXT TO IMPOSSIBLE FOR THE UNINITIATED TO INTERPRET AND UNDERSTAND.

THIS POLICY NEEDS TO BE COMPLETELY RE-WRITTEN WITH PARTICULAR REGARD TO USING LANGUAGE THAT WILL BE ABLE TO BE INTERPRETED AND UNDERSTOOD BY ANY WHO MIGHT READ IT.

5) *POLICY ON CLEARANCES/LETTERS OF GOOD STANDING*:

THERE ARE TERMS WHICH THE BOARD UTILIZED IN THE WRITING OF THIS POLICY, WHICH ARE NOT DEFINED AND THEREFORE CONTRIBUTE TO CONFUSION AND MISUNDERSTANDING. FOR EXAMPLE, "CLEARANCE OR LETTER OF GOOD STANDING", AND "PRINCIPAL" ARE TERMS WHICH SHOULD BE DEFINED.

IN FACT A REFERENCE TO SECTION 73(1) OF THE ACT COULD HELP IN THE INTERPRETATION OF THE TERM "PRINCIPAL".

6) *POLICY ON COLLECTION*:

IN ITS DISCUSSIONS WITH THE ADMINISTRATION OF THE BOARD REGARDING THIS POLICY, COMMITTEE MEMBERS WERE CONCERNED ABOUT THE USE OF THE WORD "SHOULD" IN (iv). WE WERE ADVISED THAT THE BOARD DOES NOT, IN ALL CASES, STRICTLY ADHERE TO THE POLICY.

THE COMMITTEE RECOMMENDS THAT THE WORD "SHOULD" BE DELETED AND THAT "SHALL" BE SUBSTITUTED. THEREFORE WE RECOMMEND FURTHER THAT A CONSISTENT PRACTICE OF BEGINNING JUDGEMENT PROCEDURES IN SUCH CIRCUMSTANCES BE CONSISTENTLY APPLIED.

7) *POLICY - FORM LETTER ARBITRARY ASSESSMENT NOTICE*:

THE COMMITTEE HOLDS SOME CONCERN WITH THE WAY PARAGRAPH THREE OF THIS FORM LETTER IS WRITTEN. WE FEEL THAT THE APPROACH TAKEN IS MUCH TOO SOFT, UNDER THESE CIRCUMSTANCES, AND IS NOT REFLECTIVE OF THE FACT THAT REGISTRATION IS A REQUIREMENT.

WE WOULD RECOMMEND THAT THIS PARAGRAPH BE WRITTEN IN A MORE ASSERTIVE MANNER e.g. "TO DATE, YOUR REGISTRATION, WHICH IS REQUIRED BY LAW, HAS NOT BEEN RECEIVED BY THE BOARD AND THEREFORE YOU LEAVE THE BOARD NO ALTERNATIVE BUT TO COMMENCE THE ABOVE STATED PROCESS."

8) *POLICY ON LEVYING OF SERVICE CHARGES*:

RECOMMENDATION L-63 SETS OUT THAT INTEREST ASSESSED AGAINST DELINQUENT PAYMENTS SHALL NOT EXCEED THE PRIME BANK RATE PLUS 2%. THIS POLICY SHOULD BE RE-WRITTEN TO REFLECT THE RECOMMENDATION.

IN PARAGRAPH THREE THE WORD "VOLUNTARILY" APPEARS. WE WOULD RECOMMEND THAT THE WORD BE DELETED FROM THE TEXT.

9) *POLICY ON LATE FILING PENALTIES*:

RECOMMENDATION L-73 WOULD CHANGE THE LEVEL OF THE FINE AND IF ADOPTED INTO LEGISLATION THE BOARD MUST MAKE THE NECESSARY AMENDMENTS TO THE POLICY.

AS WELL, WE WOULD RECOMMEND THAT THE SPECIFIC SECTION OF THE ACT BE REFERENCED IN THE POLICY, i.e. SECTION 47(9) AND THAT THE REFERENCE TO SECTION 61 BE AMENDED TO READ SECTION 60 IN ACCORD WITH THE REVISED STATUTE.

10) *POLICY ON MINIMUM ANNUAL ASSESSMENTS*:

THE COMMITTEE IS PREPARED TO RECOMMEND THAT THE MINIMUM ASSESSMENT REFERENCED HERE BE AMENDED AS FOLLOWS:

A) $25.00 TO READ $50.00, AND

B) $50.00 TO READ $100.00.

THE PRESENT MINIMUMS DO NOT MEET THE COSTS OF ADMINISTRATION.

AGAIN, THE POLICY SHOULD BE RE-DRAFTED AND WRITTEN IN A MORE PRECISE AND CLEAR MANNER.

11) *POLICY ON CLOSE-OUTS*:

RECOMMENDATION L-19 RECOMMENDS UNIVERSAL COVERAGE OF WORKERS' COMPENSATION ON ALL WORKERS IN THE PROVINCE. WHEN ADOPTED BY THE LEGISLATURE, THE BOARD MUST AMEND THIS POLICY BY DELETING iv).

12) *POLICY ON OVER PAYMENTS*:

THE MAJOR CONCERN WITH THIS POLICY RELATES TO THE TERMINOLOGY AND THE TYPING ERRORS:

A) FIRST PARAGRAPH: "RETURN TO OVERPAYMENT REQUESTED", SHOULD READ "REQUESTED TO RETURN THE OVERPAYMENT".

B) SECOND PARAGRAPH: "WITH THE INJURY EMPLOYER", SHOULD READ "WITH THE PRE-INJURY EMPLOYER".

C) THIRD PARAGRAPH: SHOULD BE COMPLETELY REDRAFTED, e.g.: "SHOULD THE WORKER IGNORE THE REQUEST OF THE BOARD TO RETURN THE OVERPAYMENT AND HE RETURNS TO WORK WITH A DIFFERENT EMPLOYER; OR, WHERE THE BOARD IS UNABLE TO CONTACT

> HIM, THE RECORD WILL BE MAINTAINED ON FILE AND THE OVERPAYMENT SHALL BE DEDUCTED FROM ANY FUTURE CLAIM WHICH THE WORKER MAY FILE WITH THE BOARD."

13) *POLICY ON OVERPAYMENTS*:

THIS POLICY SHOULD BE CLEARLY DISTINGUISHABLE FROM THE FOREGOING POLICY. SUCH CAN BE ACHIEVED SIMPLY BY ADDING A WORD OR TWO IN THE HEADING, e.g. "OVERPAYMENT - CLAIMANT" AND "OVERPAYMENT - INSTITUTIONAL OR PROFESSIONAL".

THE SECOND SENTENCE IS DIFFICULT TO INTERPRET AND UNDERSTAND AND NEEDS TO BE RE-DRAFTED.

14) *POLICY AND PROCEDURE*:

IT IS FELT THAT THE HEADING TO THIS POLICY IS TOO GENERAL IN NATURE AND SHOULD, INSTEAD, REFLECT THE INTENT MORE SPECIFICALLY, e.g. "ADDICTIVE MEDICATIONS".

WE WOULD RECOMMEND THAT THIS POLICY BE RE-WRITTEN IN A MANNER WHICH WOULD CLEARLY AND CONCISELY REFLECT THE PRACTICE OF THE BOARD IN THIS REGARD, e.g.:

"IT IS THE POLICY OF THE WORKERS' COMPENSATION BOARD THAT ADDICTIVE MEDICATIONS SUCH AS HALCION, ATIVAN, VALIUM AND ELAVIL ARE MEDICATIONS WHICH SHOULD ONLY BE USED ON A SHORT TERM BASIS. THE BOARD WILL ONLY PAY FOR SUCH MEDICATIONS DURING ACCUTE STAGES OF DISABILITY. MEDICATIONS OF THIS CLASS WILL NOT BE COVERED BY THE BOARD FOR UNDEFINED AND INDEFINITE PERIODS OF TIME AND WILL ONLY BE COVERED AFTER A MEDICAL ASSESSMENT HAS DETERMINED THAT THE CASE IS ONE OF ACUTE PAIN AND THE DURATION PROPOSED FOR TAKING THE MEDICATION IS CLEARLY DEFINED. WHEN MEDICATIONS IN THIS CLASS ARE PRESCRIBED, ALL PRESCRIPTIONS WILL BE MAINTAINED IN THE INDIVIDUAL FILE AND FLAGGED TO THE ATTENTION OF THE MEDICAL OFFICER FOR PURPOSES OF CASE REVIEWS."

15) *POLICY*:

AGAIN, THE HEADING IS VERY GENERAL IN NATURE AND SHOULD RATHER REFLECT THE SPECIFIC NATURE OF THE POLICY, e.g. "LONG TERM MEDICATIONS".

THE POLICY NEEDS TO BE RE-DRAFTED TO CLEARLY AND CONCISELY REFLECT THE PRACTICE OF THE BOARD IN THIS REGARD.

16) *POLICY - PHONE CALLS*:

THE HEADING TO THIS POLICY WOULD MORE APPROPRIATELY BE, "LONG DISTANCE PHONE CHARGES".

DUE TO THE FACT THAT THE BOARD HAS A TOLL FREE NUMBER WHICH WAS MOST RECENTLY ACQUIRED, THIS POLICY SHOULD BE RE-WRITTEN TO REFLECT THAT FACT AND ALSO THE NUMBER, 368-5680, SHOULD BE INCORPORATED INTO THE POLICY.

17) *POLICY - HANDBOOKS*:

THE HEADING SHOULD BE CHANGED TO REFLECT A BROADER LIST OF PUBLICATIONS WHICH SHOULD BE GENERATED BY THE BOARD DUE TO THE RECOMMENDATIONS OF THE COMMITTEE, e.g. "HANDBOOKS, MANUALS AND BROCHURES".

THE REFERENCE TO A SPECIFIC CHARGE TO DEPOSIT AGENCIES, AS PER PARAGRAPH TWO, SHOULD BE DELETED AND A MORE GENERAL STATEMENT SHOULD BE INSERTED HERE, e.g.:

"WHENEVER GOVERNMENT OR ANY DEPOSIT AGENCY REQUESTS COPIES OF BOARD HANDBOOKS, MANUALS OR BROCHURES, THEY SHALL BE INFORMED THAT THERE IS A CHARGE PER COPY. THE CHARGE PER COPY SHALL REFLECT THE COST OF THE MATERIALS TO THE BOARD."

18) *POLICY - HOMECARE POLICY*:

THIS POLICY NEEDS TO BE RE-WRITTEN, AGAIN, TO CLEARLY AND CONCISELY REFLECT THE INTENT OF THE BOARD, e.g.:

PARAGRAPH THREE - "THE PROVISION OF ATTENDANTS WILL BE CONSIDERED ON THE BASIS OF A PHYSICAL AND PSYCHOLOGICAL ASSESSMENT AND A DETERMINATION OR FINDING THAT AN ATTENDANT(S) IS NECESSARY."

PARAGRAPH FOUR - THE LAST SENTENCE AS IT EXISTS IS CONFUSING AND NEEDS TO BE RE-WRITTEN TO REFLECT CLEARLY AND CONCISELY THE INTENT OF THE BOARD.

PARAGRAPH EIGHT - THIS PARAGRAPH SHOULD REFLECT THE TERMINOLOGY AND INTENT OF RECOMMENDATION L-12.

19) *POLICY ON PHYSIOTHERAPY TREATMENT*:

THIS POLICY IS WRITTEN IN SUCH A MANNER AS TO SUGGEST THAT A REVIEW DOES NOT TAKE PLACE PRIOR TO THE TWENTY-FIRST VISIT. IN PRACTICE THIS IS NOT THE CASE, AS A REVIEW CAN, AND SHOULD, TAKE PLACE AT ANY TIME IN THE PROCESS.

WE WOULD RECOMMEND THAT THE POLICY BE RE-WRITTEN TO REFLECT THE FACT THAT A REVIEW MAY TAKE PLACE AT ANY TIME IN THE PROCESS AND THAT A REVIEW WILL DEFINITELY TAKE PLACE AFTER THE TWENTY-FIRST VISIT.

20) *POLICY: GLASSES AND SECOND POLICY*:

THE TWO POLICIES WITH PAGE NUMBERS 46 AND 47 WRITTEN IN PEN SHOULD BE INCORPORATED INTO A SINGLE POLICY STATEMENT.

IN THE FIRST PARAGRAPH (46) THE WORDS "WHILE ON THE FACE OF THE WORKER" SHOULD BE DELETED AND THE FOLLOWING SUBSTITUTED, "WHILE BEING WORN BY THE WORKER".

THE POLICY, AS WELL, SHOULD REFERENCE CONTACT LENSES.

21) *POLICY ON BRACES AND PROSTHETICS*:

WE BELIEVE THAT WHERE THE ACT IS REFERENCED IN ANY POLICY, THEN THE SPECIFIC SECTION OF THE ACT WHICH APPLIES SHOULD BE CITED IN THE POLICY. THIS WILL AID CLIENTS IN INTERPRETING AND UNDERSTANDING THE POLICY AND THE LEGISLATION.

22) *POLICY ON U.I.C. WORK PROJECT - "POLICY 1984"*:

WE WOULD RECOMMEND THAT EACH POLICY HAVE A SPECIFIC HEADING WHICH MAY BE REFERRED TO IN INDENTIFYING A SPECIFIC POLICY. THIS POLICY DOES NOT HAVE ANY HEADING OTHER THAN THE "POLICY 1984" NOTATION.

WHERE THE POLICY REFERS TO $17,000 IN PARAGRAPH ONE, IT WOULD, WE BELIEVE, BE MORE APPROPRIATE TO REPLACE THE SPECIFIC DOLLAR AMOUNT WITH THE REFERENCE "MAXIMUM COMPENSABLE YEARLY SALARY" AND REFERENCE THE SECTION OF THE ACT WHICH CONTAINS THE DEFINITION AND THE MANNER IN WHICH THE M.C.Y.S. IS DETERMINED.

THE REFERENCE TO SECTION 46(2) OF THE ACT SHOULD BE AMENDED TO READ SECTION 45(2) DUE TO STATUTORY REVISION.

23) *POLICY ON WITNESSES - "BOARD POLICY"*:

AGAIN THERE IS NO SPECIFIC HEADING SO AS TO BE ABLE TO IDENTIFY THIS POLICY BY A TOPIC.

WE WOULD RECOMMEND THAT THIS POLICY BE RE-WRITTEN TO REFLECT THE FACT THAT BOARD PERSONNEL *SHALL* INTERVIEW ALL WITNESSES AND TO CLEARLY AND PRECISELY ESTABLISH THE PROCESS WHERE WITNESSES ARE INVOLVED.

24) *POLICY ON STRESS*:

WE WOULD RECOMMEND THAT THE HEADING TO THIS POLICY SHOULD BE "PHYSICAL TRAUMA INDUCED STRESS".

THE COMMITTEE IS ADVISED THAT STRESS RELATED TO PSYCHOLOGICALY INDUCED STRESS IS CONSIDERED TO BE COVERED IN THE INDUSTRIAL DISEASES.

THIS PRESENT POLICY ON STRESS RELATES SPECIFICALLY TO CASES WHERE PHYSICAL INJURY HAS OCCURRED AND THE RESULTING TRAUMA ASSOCIATED WITH THE INJURY RESULTS IN STRESS RELATED HYPERTENSION RESULTING IN STROKE, FOR EXAMPLE.

WE WOULD RECOMMEND THAT THE POLICY BE RE-WRITTEN TO CLEARLY AND PRECISELY SET OUT THE POLICY AS WE HAVE BEEN BRIEFED BY THE BOARD.

THE COMMITTEE RECOMMENDS FURTHER THAT A SPECIFIC POLICY BE WRITTEN FOR THE SECOND STRESS SITUATION, i.e. PSYCHOLOGICAL.

25) *POLICY ON ALLERGIES - NO HEADING*:

THERE IS NO HEADING TO THIS POLICY AND SUCH APPEARS TO BE A FREQUENT OVERSIGHT.

THE THIRD PARAGRAPH, WE BELIEVE, PLACES A PARTICULARLY HEAVY ONUS ON THE INJURED WORKER.

WE ARE INFORMED THAT THE POLICY OF THE BOARD, AT PRESENT, IS TO INVOLVE THE INJURED WORKER, WHO HAS EXPERIENCED CONTINUED PROBLEMS IN THE EXISTING WORKPLACE, IN A PROGRAM OF VOCATIONAL REHABILITATION SO AS TO PROVIDE THE WORKER WITH THE OPPORTUNITY OF FUTURE EMPLOYMENT AWAY FROM THE WORK ENVIRONMENT WHICH IS CAUSING THE PROBLEM.

WE BELIEVE THIS IS APPROPRIATE AND PROPER ACTION IN SUCH CASES.

THE COMMITTEE WOULD RECOMMEND THAT THIS POLICY BE REWRITTEN TO REFLECT THIS PRACTICE.

26) *POLICY ON EDUCATION*:

THE COMMITTEE HOLDS PARTICULAR CONCERN WITH REGARD TO VOCATIONAL REHABILITATION AS MAY BE GARNERED FROM OUR RECOMMENDATION L-33 EARLIER IN THIS REPORT.

WE ARE CONVINCED THAT A GREATER EMPHASIS MUST BE PLACED ON THIS WHOLE AREA OF REHABILITATION OF INJURED WORKERS.

THEREFORE WE WOULD RECOMMEND THAT THIS POLICY BE ENTITLED *"VOCATIONAL REHABILITATION"* AND RATHER THAN HAVE A SINGLE PAGE OF POLICY WE ARE RECOMMENDING THAT A *"POLICY MANUAL"* ON VOCATIONAL REHABILITATION BE WRITTEN AND CONTAIN ALL OF THE NECESSARY DETAIL AS IT RELATES TO THE SUBJECT.

FOR PURPOSES OF GUIDANCE TO THE BOARD IN DRAFTING SUCH A MANUAL, WE WOULD DIRECT THEM TO PAGE 102 OF THE *REPORT OF THE WORKERS' COMPENSATION REVIEW COMMITTEE,* MANITOBA, MAY, 1987.

WE WOULD PARTICULARLY DIRECT THE BOARD'S ATTENTION TO PAGES 105 AND 106 WHERE CONSIDERABLE DETAIL IS SET OUT WITH REGARD TO THE TABLE OF CONTENTS OF SUCH A MANUAL.

27) *POLICY ON INVESTIGATIONS*:

AGAIN WE WOULD RECOMMEND THAT THE HEADING SHOULD CLEARLY SET OUT THE INTENT OF THE POLICY, i.e. "CLAIMS INVESTIGATIONS".

WE WOULD ENCOURAGE THE BOARD TO WRITE A POLICY THAT CLEARLY ESTABLISHES A REGULAR PROCEDURE FOR INVESTIGATING CLAIMS AND TO RE-AFFIRM THAT THE ONUS IS UPON THE BOARD ITSELF TO DETERMINE THE VALIDITY OF CLAIMS, TO OBTAIN STATEMENTS OF INJURED WORKERS, OF EMPLOYERS AND OF WITNESSES ALIKE; AND TO RE-AFFIRM THAT IT IS NOT THE OBLIGATION OF THE INJURED WORKER TO PROVE, NOR THE OBLIGATION OF THE EMPLOYER TO DISPROVE ANY ACCIDENT CLAIM.

INVESTIGATIONS ARE, AND SHOULD REMAIN, FACT FINDING MISSIONS.

28) *POLICY ON PRACTICE*:

THIS POLICY REFERENCES THE "CASE REVIEW COMMITTEE" AND SHOULD BE HEADED AS SUCH.

AS EXPLAINED TO THE COMMITTEE, THIS COMMITTEE IS REPRESENTATIVE OF KEY PERSONNEL FROM THE VARIOUS DIVISIONS, e.g. REHABILITATION, CLAIMS, PENSION AND ADMINISTRATION.

THE PURPOSE OF THE COMMITTEE IS TO REGULARLY REVIEW PARTICULAR CASES AND TO ENSURE FOLLOW-UP IN SPECIFIC MATTERS.

WE FEEL THAT THE PRACTICE IS APPROPRIATE AND BENEFICIAL TO THE SYSTEM AND WOULD RECOMMEND THAT IT BE A CONTINUED PRACTICE.

HOWEVER WE FEEL THAT THE POLICY, AS WRITTEN, LACKS DETAIL AND SPECIFICS AND THEREFORE SHOULD BE RE-WRITTEN TO CLEARLY AND PRECISELY DETAIL THE REPRESENTATION ON THE COMMITTEE; TO ESTABLISH A REGULAR MEETING TIME; AND TO SET OUT ITS PURPOSE AND AUTHORITY WITHIN THE SYSTEM.

29) *POLICY ON PROCEDURE*:

THIS POLICY, AS WE UNDERSTAND IT, DEALS WITH THE MATTER OF APPEALS FROM DECISIONS OF THE BOARD RELATED TO CLAIMS AND SERVICES.

WE WOULD STRONGLY RECOMMEND THAT A *"POLICY MANUAL"* WITH REGARD TO *"APPEALS"* BE DEVELOPED BY THE BOARD WITH THE NECESSARY DETAIL OF PROCEDURE, OBLIGATIONS AND RIGHTS. A MANUAL, WE SUGGEST, SIMILAR TO OUR RECOMMENDATION ON VOCATIONAL REHABILITATION.

WE WOULD DIRECT THE BOARD'S ATTENTION TO OUR RECOMMENDATION L-44 HEREIN, WHEN THEY COMMENCE DRAFTING THE POLICY MANUAL.

30) *POLICY ON APPEAL PROCEDURE*:

OUR COMMENTS AND RECOMMENDATIONS IN 29 ABOVE WOULD APPLY HERE AS WELL.

31) *POLICY ON FEES FOR SERVICE*:

WE WOULD RECOMMEND THAT THIS POLICY BE RE-WRITTEN WITH SPECIAL REGARD TO OUR RECOMMENDATION L-39 - CHIEF EXECUTIVE OFFICER.

THE COMMITTEE WOULD RECOMMEND THAT THE C.E.O. AND THE DIRECTOR OF FINANCE BE INVOLVED IN THESE NEGOTIATIONS AND NOT THE CHAIRMAN OF THE BOARD.

BECAUSE THE FINAL APPROVAL OF ANY NEGOTIATIONS RESTS WITH THE BOARD AS A WHOLE, TO HAVE THE CHAIRMAN INVOLVED DIRECTLY IN THE NEGOTIATIONS WOULD TAINT HIS OBJECTIVITIY WHEN THE MATTER FINALLY COMES TO THE BOARD FOR ITS' APPROVAL.

WORK AT THIS LEVEL IS MORE APPROPRIATELY THE RESPONSIBLITY OF THE ADMINISTRATION.

32) *POLICY ON MEDICAL AID*:

AS WE RECOMMENDED WITH REGARD TO VOCATIONAL REHABILITATION (26) WE WOULD RECOMMEND A SIMILAR PRACTICE WITH REGARD TO MEDICAL AID, i.e. THAT A *"MEDICAL AID MANUAL"* BE DRAFTED AND PUBLISHED WITH SIMILAR CONTENT AS SET OUT IN THE MANITOBA REPORT, PAGE 134:

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1) PROFESSIONAL SERVICES
2) SERVICES PROVIDED
3) TRAVEL AND LODGING
4) APPLIANCES
5) PURCHASED ITEMS
6) MISCELLANEOUS
7) BOARD DIRECTIVES/ORDERS

33) *POLICY ON CHIROPRACTIC CARE*:

THIS POLICY SHOULD BE INCORPORATED INTO THE *MEDICAL AID MANUAL*.

34) *POLICY ON MEDICAL AID COSTS*:

THIS POLICY NEEDS TO BE RE-WRITTEN WITH GREATER CLARITY AND PRECISION AND INCORPORATED INTO THE *MEDICAL AID MANUAL*.

35) *POLICY ON RELEASE OF INFORMATION, FINANCE, ADMINISTRATION, ETC.*

IN COMPLIANCE WITH OUR EARLIER RECOMMENDATIONS ON OPENESS AND ACCESS TO INFORMATION, WE ARE RECOMMENDING THAT ALL INFORMATION OF A FINANCIAL AND ADMINISTRATIVE (POLICY-PRACTICE) NATURE SHOULD BE DISCLOSED TO THE PERSON ENQUIRING *SO LONG AS SUCH INFORMATION DOES NOT BREACH ANY REQUIRED CONFIDENTIALITY OR DISCLOSE INFORMATION ON ANOTHER PERSON OR EMPLOYER, WHO IS NOT THE PERSON OR EMPLOYER WHO IS MAKING THE ENQUIRY.*

FOR EXAMPLE: THE BOARD SHOULD NEVER DISCLOSE TO PERSON OR EMPLOYER "X", INFORMATION ON PERSON OR EMPLOYER "Y", UNLESS PERSON OR EMPLOYER "Y" PROVIDES HIS PERMISSION IN WRITING.

36) *POLICY ON RELEASE OF INFORMATION*:

WE WERE ADVISED DURING THE PROCESS OF OUR DECISION MAKING THAT THE BOARD HAD ADOPTED A NEW POLICY ON THE RELEASE OF INFORMATION IN THESE CIRCUMSTANCES.

THE COMMITTEE HAD THE OPPORTUNITY TO REVIEW THIS POLICY, *AFTER IT HAD BEEN ADOPTED*. WE HAD A FEW CONCERNS AS IT RELATED TO FORMS AND CERTAIN WORDING. WE CONVEYED THESE CONCERNS TO THE BOARD AND WE ARE HOPEFUL THAT THE BOARD WILL ADDRESS THEM.

WE WOULD DIRECT THE BOARDS' ATTENTION TO OUR RECOMMENDATION L-65 WITH PARTICULAR REGARD TO PARTS (B)(iv), (vi), (vii), (viii), AND (ix) AS THESE PARTICULAR CONCERNS ARE NOT ENTIRELY MET BY THE NEW POLICY.

37) *POLICY ON CLAIMENT COMPLAINT REPORTS*:

THERE IS SOME CONCERN HELD THAT ANY COMPLAINT RECEIVED BY THE BOARD CONCERNING ANY CLAIMANT, WHERE THE COMPLAINANT REFUSES TO IDENTIFY HIMSELF/HERSELF, SHOULD BE CAUTIOUSLY AND CAREFULLY ENTERTAINED, IF AT ALL.

ANY APPROACH MADE TO A CLAIMANT BY THE BOARD, REGARDING ANY COMPLAINT RECEIVED, MUST BE HANDLED WITH CARE, CONCERN AND TACT.

IT IS OBVIOUS THAT IN CERTAIN CASES WHERE THE COMPLAINANT ALLEGES BLATANT MISCONDUCT ON THE PART OF THE CLAIMANT, THE BOARD HAS AN OBLIGATION TO INVESTIGATE THE MATTER TO THE BEST OF ITS ABILITY.

WE WOULD RECOMMEND THAT THE POLICY BE RE-WRITTEN WITH THESE COMMENTS AND CONCERNS IN MIND.

38) *POLICY ON SOLICITORS AND SECOND PERSON INQUIRIES*:

DUE TO THE FACT THAT A NEW POLICY HAS BEEN ADOPTED WITH REGARD TO THE RELEASE OF INFORMATION AND WITH DUE REGARD TO OUR RECOMMENDATION L-65 HEREIN, WE RECOMMEND THAT THIS POLICY BE REPEALED IMMEDIATELY.

39) *POLICY ON REFERRAL CONSULTATIONS*:

IT IS NOTED THAT THE POLICY LACKS AN APPROPRIATE HEADING AND WE WOULD RECOMMEND THAT THE POLICY, RE-WRITTEN, BE INCORPORATED INTO THE *"MEDICAL AID MANUAL"*.

40) *POLICY ON REFERRALS - JANUARY 26, 1989*:

SIMILARLY WE WOULD RECOMMEND THAT THIS POLICY BE INCORPORATED INTO THE *"MEDICAL AID MANUAL"*.

41) *POLICY ON STRAINS, ETC. FOR MECHANICAL CONDITIONS*:

THIS POLICY NEEDS TO BE RE-WRITTEN AND CARE GIVEN TO DEFINING "MECHANICAL CONDITIONS"; AND, CLEARLY AND PRECISELY SETTING OUT THE INTENT, e.g.

"SIX MONTHS AFTER A CLAIM IS CLOSED; AND, WHERE THERE IS NO EVIDENCE OF ANY CONTINUING TREATMENT; AND, WHERE, AT THE TIME THE CASE WAS CLOSED, THERE WAS NO MEDICAL INDICATION THAT THERE IS, OR THERE IS THE POTENTIAL THAT THERE COULD BE, AN ONGOING PERMANENT DISABILITY, THEN ANY APPLICATION TO RE-OPEN THE CLAIM OR TO CLAIM ANY ADDITIONAL TREATMENTS OR SERVICES WILL BE DENIED UNLESS THERE IS EVIDENCE OF A NEW INCIDENT.

42) *POLICY ON REPETITIVE STRESS INJURIES*:

THE POLICY NEEDS TO BE UP-DATED TO MEET OUR RECOMMENDATION L-2 WHEN IT IS ADOPTED INTO LAW AND, NEVERTHELESS, NEEDS TO BE AMENDED TO REFERENCE THE SPECIFIC SECTION OF THE ACT REFERRED TO IN THE DEFINITION OF ACCIDENT, i.e. SECTION 1(a).

43) *POLICY ON LIGHT DUTY PROGRAMS*:

THIS POLICY NEEDS TO BE RE-WRITTEN SO AS TO PROVIDE GREATER CLARITY AND UNDERSTANDING, e.g. THE REFERENCE TO AN INITIAL VISIT SHOULD CLEARLY STATE "BY A COUNSELLOR AND AT THE WORKPLACE OF THE WORKER"; AND PERSONNEL NAMES MUST BE DELETED FROM POLICY AND REPLACED WITH THE JOB TITLE OF THE PERSON WHOM HAS THE RESPONSIBLIITY IN THIS REGARD; AND, "CASE STUDY" SHOULD SPECIFICALLY REFERENCE THE "CASE REVIEW COMMITTEE (SEE NO. 28).

44) *POLICY ON CONFINEMENT TO DETOX CENTRE*:

THIS POLICY SHOULD BE RE-WRITTEN WITH REGARD TO OUR RECOMMENDATION L-55 HEREIN AND SHOULD BE RE-WRITTEN TO CLEARLY AND PRECISELY ESTABLISH THE INTENT, e.g. "ANY CASE CONFINED TO A DETOX CENTRE" SHOULD READ "ANY CLAIMANT (OR INJURED WORKER) CONFINED TO A DETOX CENTRE"; AND "CASE MANAGEMENT PANEL" SHOULD READ "CASE REVIEW COMMITTEE" FOR CONSISTENCY (SEE NO. 28).

RECOMMENDATION P-79

A) THAT ONE (1) ADDITIONAL CLASS BE CREATED, ENTITLED "SALES AND SERVICE" AND WHICH SHOULD ENCOMPASS THOSE SUB-CLASSES 312, 313, 314, 315, 316, 317, 502 AND 506 AS PRESENTLY ESTABLISHED (SEE APPENDIX "I").

B) THAT CLASS 3 - "MANUFACTURE AND SALE" BE ENTITLED "MANUFACTURE AND FARMING"; AND, THAT CLASS 5 - "TRANSPORTATION AND SERVICES" BE ENTITLED "TRANSPORTATION AND FISHING" (SEE APPENDIX "I").

C) THAT THE PRACTICE OF DEPOSIT ACCOUNT FINANCING BE REDUCED IN ITS' APPLICATION AND *ONLY* APPLY TO THE PROVINCIAL GOVERNMENT (CLASS 6) AND THE CANADIAN GOVERNMENT (CLASS 8) AND APPLY *ONLY* TO THE DIRECT CIVIL SERVICE.

D) THAT CLASSES 7 (CNR AND MARINE ATLANTIC) AND 9 (NORTHUMBERLAND FERRIES LTD.), THE INSTRUCTIONAL SCHOOL BOARD EMPLOYEES, THE FACULTY OF U.P.E.I. AND ANY OTHER NON CIVIL SERVICE EMPLOYEES BE ASSESSED AS PER THE PRACTICE WHICH PRESENTLY EXISTS FOR CLASSES 1 THROUGH 5.

E) THAT THE ADMINISTRATION FEE BE REVIEWED AND SET AT A RATE THAT RE-IMBURSES THE BOARD THEIR ACTUAL COSTS.

F) THAT ALL DEPOSIT ACCOUNT EMPLOYERS SHALL PROVIDE A DEPOSIT OF SUFFICIENT FUNDS THAT WILL MEET THE INITIAL COSTS ASSOCIATED WITH THE CLAIMS EXPERIENCE OF THE EMPLOYER FROM YEAR TO YEAR.

RECOMMENDATION P-80

(A) THAT THE BOARD IMMEDIATELY DEVELOP A PLAN FOR THE ON-GOING TRAINING OF BOARD PERSONNEL IN ALL FACETS OF ITS OPERATION AND PROVIDING SPECIAL ATTENTION TO THE AREAS OF:

i) HUMAN RELATIONS TRAINING;

ii) INTERVIEWING TECHNIQUES;

iii) COUNSELLING TECHNIQUES;

iv) ON-GOING TRAINING AND EDUCATION IN AREAS OF SPECIFIC SKILLS AND KNOWLEDGE OF INDIVIDUAL JOBS AND POSITIONS.

(B) THAT THE BOARD SERIOUSLY CONSIDER INCREASING THE NUMBER OF COUNSELLORS FOR THE REHABILITATION DIVISION BY HIRING SKILLED AND TRAINED INDIVIDUALS FOR THESE CRITICALLY IMPORTANT POSITIONS.

(C) A NUMBER OF ORGANIZATIONS AND INDIVIDUALS RECOMMENDED THAT THE BOARD HIRE A QUALIFIED MEDICAL OFFICER TO ADMINISTER, REVIEW AND INSURE PROPER PROGRESS IN THE MEDICAL MANAGEMENT OF INJURED WORKERS, AN INDIVIDUAL, A PROFESSIONAL, WHO IS QUALIFIED IN OCCUPATIONAL MEDICINE.

THE BOARD HIRED A QUALIFIED PROFESSIONAL TO FILL THIS ROLE AND FOR THE FIRST TIME, THE BOARD HAS A FULL TIME, QUALIFIED DOCTOR ON STAFF.

THIS COMMITTEE STANDS WHOLEHEARTEDLY IN AGREEMENT WITH THIS ACTION AND COMMENDS THE BOARD FOR ITS DECISION IN THIS REGARD.

RECOMMENDATION P-81

A) THAT, IN CONCERT WITH THE CIVIL SERVICE COMMISSION, THE BOARD RE-WRITE ALL POSITION CLASSIFICATION DESCRIPTIONS IN CONFORMITY WITH THE NORMAL STANDARDS OF THE CIVIL SERVICE COMMISSION AND KEEPING IN MIND OUR COMMENTS SET OUT ELSEWHERE HEREIN.

B) THAT THE BOARD ESTABLISH A PROGRAM TO PERFORM REGULAR, ON-GOING AND CONSISTENT JOB EVALUATIONS OF ALL STAFF AS FOLLOWS:

i) THAT THE BOARD DEVELOP A JOB EVALUATION FORM THAT IS APPROPRIATE AND FITTING TO THE SYSTEM;

ii) THAT THE BOARD PERFORM JOB EVALUATIONS ON ALL PROBATIONARY STAFF AT THREE MONTHS, FIVE MONTHS, EIGHT MONTHS AND TWELVE MONTH INTERVALS.

iii) THAT THE BOARD PERFORM JOB EVALUATIONS ON *ALL* PERMANENT STAFF ANNUALLY, ON THE ANNIVERSARY DATE OF THEIR HIRE.

iv) THAT JOB EVALUATIONS BE THOROUGHLY PERFORMED AND THE APPROPRIATE AND NECESSARY TIME BE ALLOTTED TO THIS CRITICAL FUNCTION BY SUPERVISORS AT ALL LEVELS.

RECOMMENDATION P-82

A) WE WOULD RECOMMEND THAT THE BOARD DEVELOP A POLICY STATEMENT WITH REGARD TO PRE-EXISTING CONDITIONS WHICH IS CONSISTENT AND COMPATABLE WITH SECTION 6(7) OF THE ACT.

B) SUCH POLICY SHOULD CONTAIN A STATEMENT OF PRINCIPLE, e.g. "SECTION 6(7) OF THE ACT PROVIDES FOR PAYMENT OF COMPENSATION IN RESPECT OF PRE-EXISTING OR UNDERLYING CONDITIONS THAT ARE RELATED TO AN INJURY SUFFERED IN A COMPENSABLE ACCIDENT."

C) CONTAIN A STATEMENT OF PRINCIPLE WITH REGARD TO THE OBLIGATION OF THE WORKERS' COMPENSATION SYSTEM TO RETURN THE INJURED WORKER TO HIS/HER PRE-INJURY CONDITION; OR, OTHERWISE, TO PROVIDE FAIR COMPENSATION FOR THE REDUCED HEALTH AND/OR DIMINISHED FINANCIAL STATUS OF THE INJURED WORKER.

D) CONTAIN A STATEMENT CONCERNING COVERAGE, e.g. "THIS POLICY APPLIES IN ALL CASES WHERE BENEFITS ARE PAYABLE AND WHERE THERE IS A RELATIONSHIP BETWEEN A PRE-EXISTING OR UNDERLYING CONDITION AND THE INJURY ARISING FROM THE ACCIDENT AND WHERE AN INCREASED DEGREE OF RESIDUAL DISABILITY OCCURS OVER THAT USUALLY FOUND IN SUCH CASES OWING TO THE PRE-EXISTING OR UNDERLYING CONDITION."

E) SHOULD PROVIDE THAT A CLAIMANT WHO HAS A STATIC PRE-EXISTING CONDITION SHOULD NOT LOSE ENTITLEMENT TO COMPENSATION OR HAVE HIS/HER BENEFITS REDUCED, NOR RECEIVE BENEFITS FOR A SHORTER DURATION OF TIME, THAN THOSE CLAIMANTS OF SIMILAR CLAIM WHO ARE WITHOUT SUCH PRE-EXISTING CONDITION.

F) SHOULD PROVIDE THAT IN THE ADJUDICATION OF OCCUPATIONAL DISEASE CLAIMS THAT ANY PRE-EXISTING OR UNDERLYING CONDITION WILL NOT BE USED AS REASONS TO TERMINATE OR REDUCE BENEFITS.

G) SHOULD PROVIDE THAT WHERE A DETERIORATING PRE-EXISTING OR UNDERLYING CONDITION EXISTS THAT COMPENSATION SHALL COVER TEMPORARY AGGRAVATION, PERMANENT AGGRAVATION, AND ENHANCEMENT OF THE CONDITION CAUSED BY A WORK INJURY. [NOTE: THE MEDICAL ASSESSMENT NECESSARY IN SUCH CASES SHOULD BE PROVIDED BY APPROPRIATE SPECIALISTS WHO ARE NOT EMPLOYEES OF THE BOARD.]

H) THE POLICY SHOULD ADDRESS SUCH OTHER MATTERS AS MAY BE NECESSARY TO ENLIGHTEN INJURED WORKERS AND EMPLOYERS ALIKE WITH REGARD TO THE PRACTICES OF THE BOARD UNDER THESE CIRCUMSTANCES, e.g. ALLERGIES, MEDICAL AID, PENSION CALCULATIONS, COMPENSATION CALCULATIONS, ETC.

RECOMMENDATION P-83

A) THAT THE BOARD DEVELOP A CLEARLY ESTABLISHED PRACTICE, IN THE APPLICATION OF THE BENEFIT OF THE DOUBT TO CASES.

B) THAT SUCH POLICY CLEARLY ESTABLISH THE TYPES OF PRESUMPTIONS THAT ARE PRESENT IN SUCH CASES, e.g. PRESUMPTIONS OF LAW, PRESUMPTIONS OF FACT.

C) THAT SUCH POLICY SHOULD REFERENCE ANY PRESUMPTIVE SCHEDULES, e.g. INDUSTRIAL DISEASE SCHEDULES.

D) THAT SUCH POLICY SHOULD REFERENCE ANY SPECIFIC PRESUMPTIONS, e.g. WHERE THE ACT STATES THAT A CERTAIN RESULT, FACT, OR STATUS EXISTS, A PRESUMPTION IS CREATED (SECTION 32).

E) THAT THE BOARD DIRECT IT'S ATTENTION TO PAGE 217 OF THE MANITOBA REPORT FOR GUIDANCE IN THE AREA OF "GUIDANCE TO ADJUDICATING STAFF" WHICH PROVIDES SOLID ADVICE FOR DEVELOPING GUIDELINES FOR SUCH POLICY.

F) OTHER GUIDELINES WHICH MAY BE CONSIDERED IN THE POLICY ARE: THE TIME WHEN MEDICAL AID WAS FIRST SOUGHT; THE TIME WHEN THE MATTER WAS FIRST REPORTED; AND WHEN THE CLAIMANT FIRST EXPERIENCED PAIN OR DISCOMFORT.

G) FINALLY WE RECOMMEND THAT AS A PRINCIPLE, THE POLICY SHOULD CLEARLY STATE THAT WHERE AN OPINION IS PRESENTED WHICH TENDS TO NEGATE ANY CLAIM, IT SHALL BE NECESSARY THAT THE OPINION BE SUPPORTED BY SUBSTANTIAL FACT, OTHERWISE SECTION 17 ALLOWS FOR THE BENEFIT OF THE DOUBT TO BE GIVEN IN THE CLAIMANTS FAVOUR.

RECOMMENDATION P-84

A) THAT THE BOARD ADOPT, VIA OUR PROPOSED POLICY PROCESS HEREIN, A RATING SCHEDULE, WHICH SHALL CONTINUE TO BE THE RATING SCHEDULE UNTIL AMENDED OR RESCINDED VIA THE POLICY PROCESS, FROM TIME TO TIME.

B) THAT THE RATING SCHEDULE BE PUBLISHED AND BE MADE AVAILABLE TO THE PARTNERS BY CONTAINMENT IN THE MEDICAL MANUAL PROPOSED EARLIER HEREIN.

RECOMMENDATION P-85

A) THAT THE BOARD COMMENCE THE PRACTICE OF DEVELOPING AND APPROVING AN ADMINISTRATIVE BUDGET ON AN ANNUAL BASIS.

B) THAT EACH OF THE DIVISIONS HAVE INPUT INTO THIS BUDGET PROCESS.

C) THAT THE BUDGET INCLUDE STAFF SALARIES, STAFF BENEFITS (e.g. PENSION, U.I.C., WORKERS' COMPENSATION, BLUE CROSS, ETC.). BOARD MEMBERS HONORARIUMS, APPEAL BOARD HONORARIUMS, CAPITAL EXPENDITURES (e.g. OFFICE FURNISHINGS, COMPUTERS, OFFICE SUPPLIES, ETC.), RENT/LEASE COSTS, INSURANCE, ETC.

D) THAT THE BOARD OF GOVERNORS SHALL HAVE THE FINAL APPROVAL OF THE BUDGET.

E) THAT DIVISIONS AND THE ADMINISTRATION KEEP EXPENDITURES TO THESE BUDGETED LEVELS EXCEPT FOR EMERGENCY SITUATIONS.

RECOMMENDATION P-86

A) THAT THE BOARD DEVELOP AND PUBLISH A POLICY STATEMENT TO THE AFFECT THAT THERE SHALL BE NO REQUIREMENT TO FORCE THE WORKER TO PROVE THAT HIS/HER CLAIM IS A VALID CLAIM, NOR TO FORCE THE EMPLOYER TO PROVE THAT THE WORKERS' CLAIM IS NOT A VALID CLAIM. THAT THIS IS THE SOLE FUNCTION OF THE WORKERS' COMPENSATION BOARD.

B) THAT THE BOARD ADOPT AS PART OF THIS POLICY THAT ALL CLAIMS ISSUES SHALL BE DETERMINED IN ACCORDANCE WITH THE BALANCE OF PROBABILITIES IN EACH CASE. CONCLUSIONS REACHED IN ALL MATTERS SHALL BE DETERMINED FROM THE FACTS OF THE CASE WHICH INVOLVES A SEARCH FOR THE BEST AVAILABLE HYPOTHESIS.

C) THAT THE BOARD ADOPT AND PUBLISH ANY "STANDARD OF PROOF", PERMISSIBLE BY THE ACT, WHICH IT INTENDS TO STAND ON IN CLAIMS CASES.

RECOMMENDATION P-87

A) THAT THE BOARD DEVELOP AND ADOPT A POLICY WITH REGARD TO THE RE-OPENING OF DECISIONS AND SUCH POLICY SHOULD COVER THE FOLLOWING CONCERNS:

i) THE MEANING OF RE-OPENING A CLAIM;

ii) THE GROUNDS FOR CONSIDERING A RE-OPENING OF ANY CLAIM, DECISION OR ADJUSTMENT;

iii) THE EFFECT OF A DETERIORATING CONDITION;

iv) THE EFFECT OF A RECURRANCE OF THE ORIGINAL INJURY;

v) THE EFFECT OF NEW WAGE RATES AT THE TIME OF THE RE-OPENER;

vi) THE EFFECT OF CHANGES IN CIRCUMSTANCES, e.g. DEPENDENTS;

vii) RETRAINING

viii) RETROACTIVITY

ix) POTENTIAL RESULTS OF ANY REVIEW.

RECOMMENDATION P-88

A) THAT THE BOARD DEVELOP POLICY WITH REGARD TO PAYMENTS FOR DISABILITY.

B) THAT THE POLICY CLEARLY DEFINE THE FOUR MAJOR CLASSIFICATIONS OF DISABILITY COVERED BY THE ACT.

C) THAT THE POLICY CLEARLY DEFINE THE FOLLOWING PRINCIPLES:

i) WHEN COMPENSATION COMMENCES,

ii) WAGE LOSS BENEFITS,

iii) CALCULATION OF EARNINGS AND WHAT CONSTITUTES EARNINGS,

iv) INDEPENDENT OPERATORS,

v) CALCULATION OF COMPENSATION,

vi) MINIMUM COMPENSATION AND MAXIMUM COMPENSATION,

vii) COMPENSABLE DAYS,

viii) DISFIGUREMENT,

ix) MEDICAL AID,

x) DURATION OF BENEFIT,

xi) DISABILITY RATING SCHEDULES,

xii) ALLOWANCES,

xiii) PENSIONS,

xiv) DEPENDENTS,

xv) LUMP SUM PAYMENTS,

xvi) RECURRENCES,

xvii) REVIEWS,

xviii) APPEALS.

RECOMMENDATION P-89

A) THAT THE BOARD DEVELOP AND PUBLISH A POLICY AND PRACTICE WITH REGARD TO HEARING LOSS, IT'S DETECTION AND THE METHOD OF CALCULATING COMPENSATION, e.g. DEFINE THE TYPES OF HEARING LOSS RECOGNIZED BY THE BOARD, DEFINE THE STANDARDS OF TESTING FOR HEARING LOSS, SET OUT THE METHODS RELIED UPON IN DETERMINING WHETHER OR NOT THE HEARING LOSS IS THE RESULT OF WORK-RELATED NOISE EXPOSURE.

B) THAT TINNITUS CASES BE RECOGNIZED AS BEING COMPENSABLE.

C) THAT WORKERS WHO SUFFER COMPENSABLE HEARING LOSS SHOULD RECEIVE THE SAME BENEFITS AS ACCRUE TO OTHER DISABLED WORKERS.

RECOMMENDATION P-90

A) THAT THE BOARD DEVELOP AND PUBLISH POLICY AND PRACTICE WITH REGARD TO MEDICAL REMOVAL AND INCORPORATE INTO THAT POLICY AND PRACTICE THE FOLLOWING:

i) DEFINE MEDICAL REMOVAL,

ii) SET OUT INTENT TO FIND SUITABLE ALTERNATE EMPLOYMENT WITH THE PRE-INJURY EMPLOYER.

iii) SET OUT INTENT TO FIND SUITABLE ALTERNATE EMPLOYMENT WITH ANOTHER EMPLOYER, IN SIMILAR EMPLOYMENT,

iv) SET OUT INTENT TO FIND SUITABLE ALTERNATE EMPLOYMENT WITH ANOTHER EMPLOYER IN WORK OF A DIFFERENT NATURE FOR WHICH THE WORKER WOULD QUALIFY,

v) DURATION OF WAGE LOSS REPLACEMENT,

vi) VOCATIONAL REHABILITATION BENEFITS,

vii) RECURRENCE DUE TO SENSITIZED CONDITION, .

viii) PERMANENT PARTIAL DISABILITY AWARD IN THE LATENT ALLERGY.

B) THE COMMITTEE WISHES TO EMPHASIZE IT'S CONCERN IN THESE CIRCUMSTANCES AND WE ENCOURAGE THE BOARD TO DO EVERYTHING POSSIBLE AND REASONABLE IN ENSURING A SMOOTH TRANSITION FOR THOSE WORKERS AFFECTED BY SUCH AN INSIDIOUS MEDICAL CONDITION.

RECOMMENDATION P-91

A) THAT THE BOARD DEVELOP AND PUBLISH A POLICY AND PRACTICE WITH REGARD TO WHAT CONSTITUTES A COMPENSABLE ACCIDENT AND CLEARLY AND CONCISELY ESTABLISH THE FACT THAT A SPECIFIC INCIDENT IS NOT REQUIRED TO VALIDATE A CLAIM.

B) THAT THE POLICY SHOULD INCORPORATE A FEW ILLUSTRATIONS OF ACCIDENTS WHICH HAVE NO SPECIFIC INCIDENT AND ARE INJURIES OR DISEASES WHICH MAY BE CONTRACTED ARISING OUT OF OR IN THE COURSE OF EMPLOYMENT, e.g. HEARING LOSS, REPETITIVE MOTION CLAIMS, DISEASE, ETC.

C) THAT THE POLICY SHOULD INCORPORATE AND ADDRESS THE FOLLOWING ISSUES AS WELL:

i) CONTRIBUTARY NEGLIGENCE,

ii) INTOXICATION,

iii) VIOLATION OF HEALTH AND SAFETY REGULATION OR RULE,

iv) ILLEGAL EMPLOYMENT (CLAIMANT NOT LEGALLY QUALIFIED FOR THE EMPLOYMENT),

v) DEVIATION FROM THE ASSIGNED TASK TO ASSIST OTHER WORKER(S),

vi) WILLFUL VIOLENCE PURPETRATED BY ANOTHER.

(**NOTE:** TO CLARIFY, NONE OF THE ABOVE ISSUES IS CONSIDERED TO BE A VALID BAR TO A WORKER'S RIGHT TO RECEIVE COMPENSATION WHERE THERE IS A WORK RELATED ACCIDENT.)

RECOMMENDATION P-92

A) THAT THE BOARD CONTINUE IT'S ASSOCIATION WITH ST. JOHN AMBULANCE AND THE RED CROSS; AND, WHERE IT IS FOUND TO BE POSSIBLE AND BENEFICIAL TO IMPROVING WORKPLACE SAFETY AND HEALTH AND SAFETY AWARENESS IN THE WORKPLACE, TO IMPROVE UPON THE PRESENT ARRANGEMENTS WITH THESE REPUTABLE ORGANIZATIONS.

RECOMMENDATION P-93

A) THAT THE POSITION OF MEDICAL DOCTOR TO THE BOARD, OF AN INDIVIDUAL QUALIFIED IN OCCUPATIONAL MEDICINE, BE CREATED AS A FULL-TIME POSITION WITHIN THE STAFF COMPLEMENT OF THE BOARD.

B) THAT THE ROLE OF THE MEDICAL DIRECTOR SHOULD BE:

i) TO PROVIDE ADVICE ON MEDICAL MATTERS IN ASSISTING STAFF IN DECISION MAKING,

ii) THE DOCTOR SHOULD NOT BECOME INVOLVED DIRECTLY IN CLAIMS ADJUDICATION,

iii) THE DOCTOR SHOULD NOT BECOME INVOLVED IN FILE MANAGEMENT,

iv) THE DOCTOR SHOULD BE LIMITED TO DESCRIBING THE MEDICAL CONDITION ONLY,

v) THE DOCTOR SHOULD BE LIMITED IN EXAMINATIONS OF CLAIMANTS STRICTLY FOR THE PURPOSES OF DETERMINING PHYSICAL DISABLEMENT AND DEGREE OF IMPAIRMENT TO BE USED IN SETTING PENSIONS,

vi) THE DOCTOR SHOULD ASSIST IN INTERPRETING MEDICAL REPORTS FOR OTHER STAFF.

C) WE WOULD ENCOURAGE THE BOARD TO REFER TO PAGE 131 OF THE MANITOBA REPORT WITH REGARD TO CONCERNS RELATED TO THE ROLE OF THE MEDICAL DOCTOR AND OTHER PROFFESIONALS.

RECOMMENDATION P-94

THAT THE BOARD DEVELOP AND PUBLISH A BENEFITS MANUAL THAT CLEARLY AND CONCISELY SETS OUT THE BENEFITS AS PROVIDED FOR BY THE LEGISLATION.

RECOMMENDATION P-95

THAT THE BOARD DEVELOP AND PUBLISH MANUALS WHICH PROVIDE TO WORKERS AND EMPLOYERS GENERAL INFORMATION REGARDING WORKERS' COMPENSATION WHICH CLEARLY AND CONCISELY SETS OUT THEIR INDIVIDUAL OBLIGATIONS AND RIGHTS UNDER THE ACT.

RECOMMENDATION P-96

(A) A NUMBER OF THE FORMS MAKE REFERENCE TO "DOCTOR", "SURGEON", "M.D.", OR "PHYSICIAN", INDIVIDUALLY. IN THE NAME OF CONSISTENCY, THESE FORMS SHOULD BE AMENDED AND SUCH REFERENCES SHOULD BE CHANGED TO READ "DOCTOR" IN ALL CASES.

(B) FORM NUMBER 6, TITLED "WORKER'S REPORT OF ACCIDENT", WE FEEL, SHOULD BE DISCARDED AND A NEW FORM ADOPTED IN THE STYLE OF FORM NUMBER 6 USED BY THE NEW BRUNSWICK WORKERS' COMPENSATION BOARD. THAT FORM IS MORE DETAILED AND SPECIFICALLY REFERENCES "INDUSTRIAL DISEASE", WHICH THE EXISTING P.E.I. FORM FAILS TO RECOGNIZE IN ITS MAKE-UP.

(C) FORM NUMBER 7, TITLED "EMPLOYER'S REPORT OF ACCIDENT", WE FEEL, SHOULD BE DISCARDED AND A NEW FORM ADOPTED IN THE STYLE OF FORM NUMBER 7 USED BY THE NEW BRUNSWICK WORKERS' COMPENSATION BOARD.

(D) FORM NUMBER 8, TITLED "SURGEON'S FIRST REPORT", WE FEEL, SHOULD BE DISCARDED AND A NEW FORM ADOPTED IN THE STYLE OF FORM NUMBER 8 IN USE BY THE NEWFOUNDLAND AND LABRADOR WORKERS' COMPENSATION BOARD; HOWEVER, THE NEW FORM SHOULD BE TITLED "DOCTOR'S FIRST REPORT".

(E) FORM NUMBER 10, TITLED "SURGEON'S PROGRESS REPORT", WE FEEL, SHOULD BE DISCARDED AND A NEW FORM ADOPTED AND TITLED "DOCTOR'S PROGRESS REPORT". THIS FORM SHOULD BE DEVELOPED IN COOPERATION WITH THE MEDICAL SOCIETY OF P.E.I.

(F) THE FORM ENTITLED "EMPLOYER'S PAYROLL STATEMENT", WE FEEL, SHOULD BE AMENDED AS FOLLOWS:

(i) INSTRUCTION NUMBER 7 SHOULD BE AMENDED TO READ, e.g. "THE EMPLOYER MUST FURNISH A LIST OF NAMES OF PERSONNEL AND THEIR EARNINGS FOR WHOM STATUTORY PAYROLL DEDUCTIONS ARE MADE".

(ii) THE BOARD SHOULD INSERT THE WORDS, "PREVIOUS YEAR'S STATISTICS", IMMEDIATELY FOLLOWING THE RED LETTERED INSTRUCTIONS AND IMMEDIATELY ABOVE THE BLACK LETTERED "TOTAL GROSS EARNINGS OF EMPLOYEES DURING:"

(iii) THE BOARD SHOULD INSERT THE WORDS, "CURRENT YEAR'S STATISTICS", IMMEDIATELY FOLLOWING BLOCK NUMBER 6 AND IMMEDIATELY ABOVE BLOCK NUMBER 7.

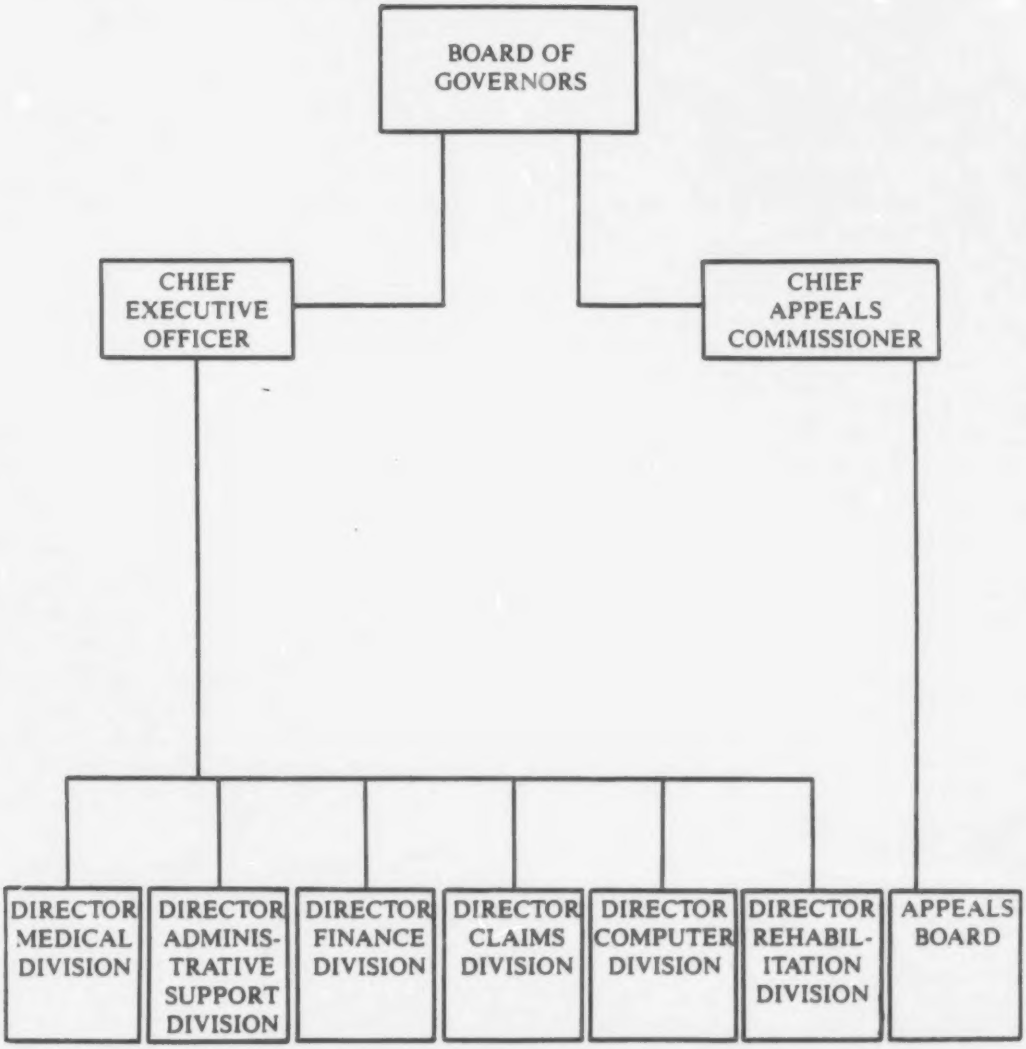
(G) ALL FORMS SHOULD HAVE A NOTATION NEAR THE BOTTOM TO THE EFFECT THAT "THIS FORM WAS ADOPTED BY DECISION OF THE BOARD ON (DATE)".

SCHEMATIC #1

HIERARCHY

WORKERS; COMPENSATION BOARD

RECOMMENDATION S-97


BOARD OF GOVERNORS
CHIEF EXECUTIVE OFFICER
CHIEF APPEALS COMMISSIONER
DIRECTOR MEDICAL DIVISION
DIRECTOR ADMINIS-TRATIVE SUPPORT DIVISION
DIRECTOR FINANCE DIVISION
DIRECTOR CLAIMS DIVISION
DIRECTOR COMPUTER DIVISION
DIRECTOR REHABIL-ITATION DIVISION
APPEALS BOARD

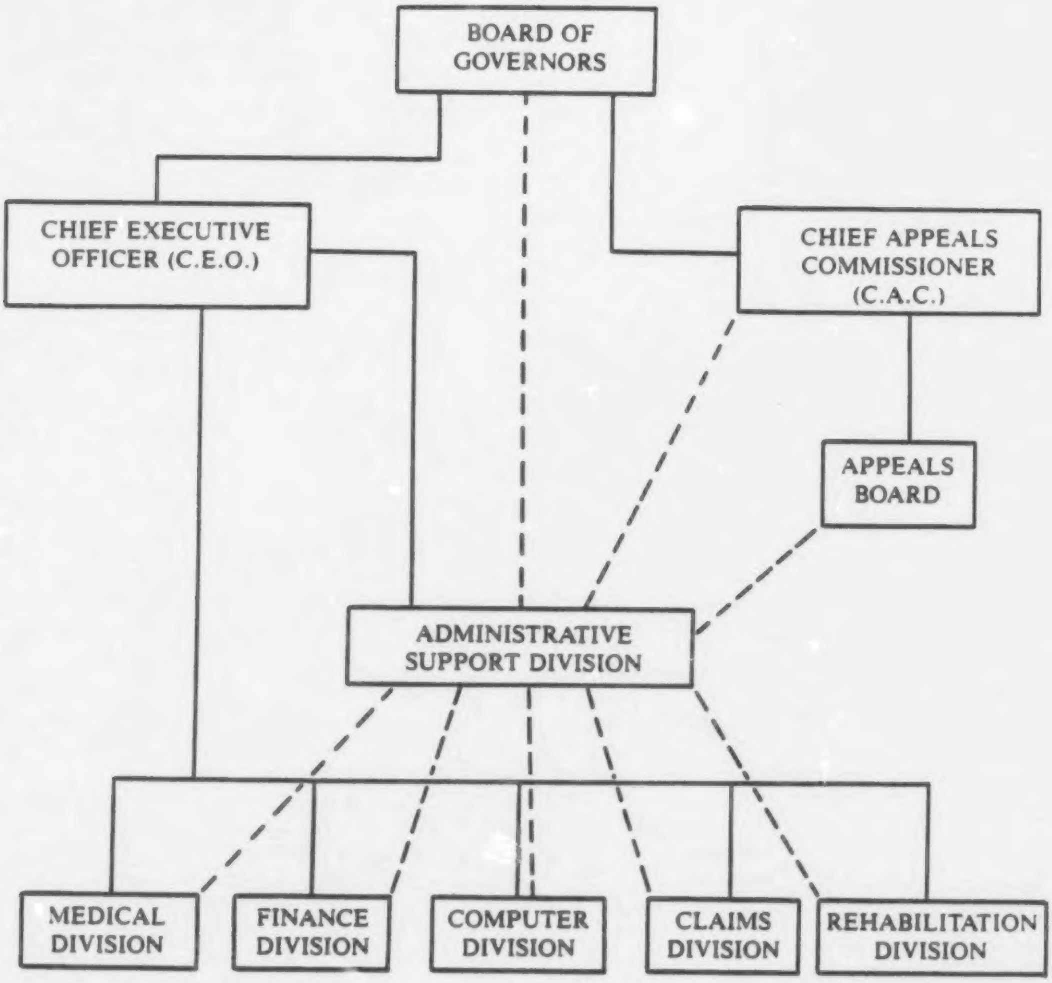
SCHEMATIC #2

OPERATIONAL STRUCTURE

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-98

WORKERS' COMPENSATION BOARD

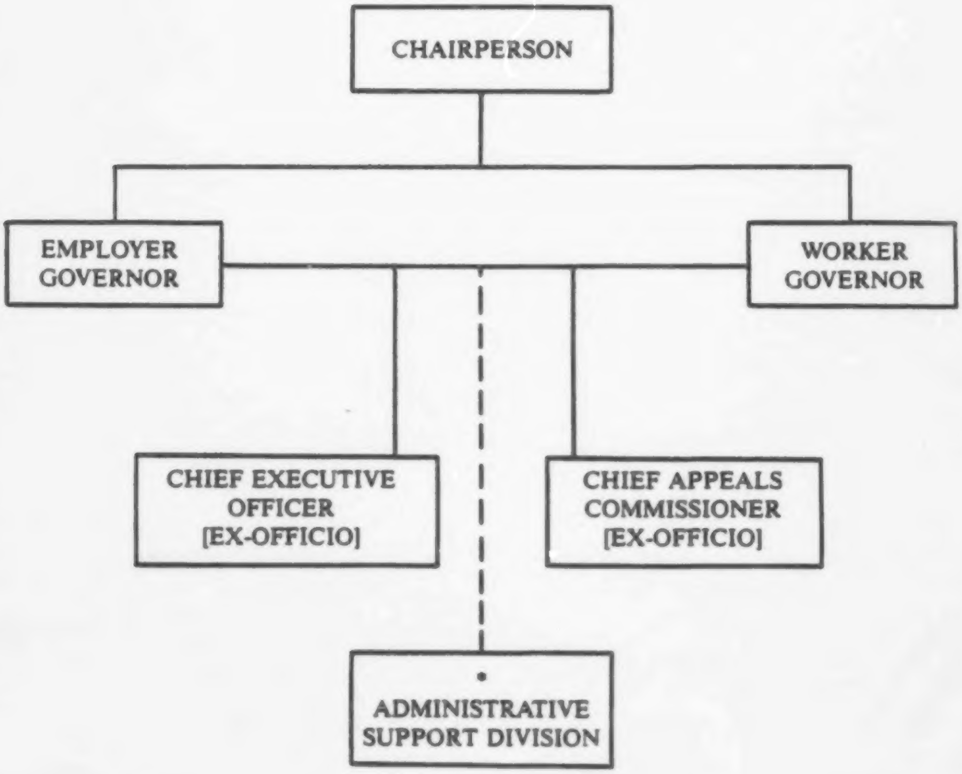

BOARD OF GOVERNORS
CHIEF EXECUTIVE OFFICER (C.E.O.)
CHIEF APPEALS COMMISSIONER (C.A.C.)
APPEALS BOARD
ADMINISTRATIVE SUPPORT DIVISION
MEDICAL DIVISION
FINANCE DIVISION
COMPUTER DIVISION
CLAIMS DIVISION
REHABILITATION DIVISION

SCHEMATIC #3

BOARD OF GOVERNORS

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-99


CHAIRPERSON
EMPLOYER GOVERNOR
WORKER GOVERNOR
CHIEF EXECUTIVE OFFICER [EX-OFFICIO]
CHIEF APPEALS COMMISSIONER [EX-OFFICIO]
*
ADMINISTRATIVE SUPPORT DIVISION

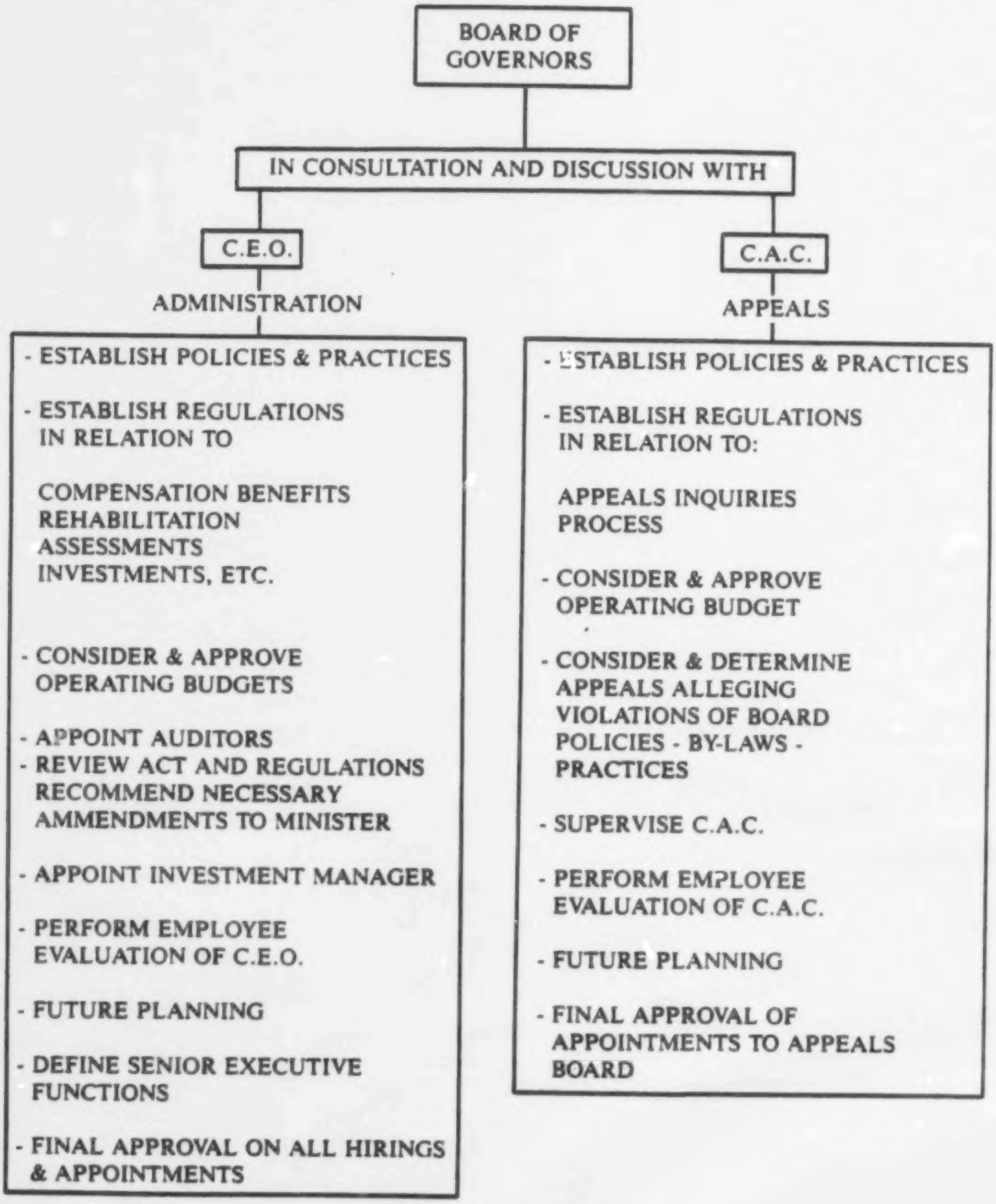
* - THE ADMINISTRATIVE SUPPORT DIVISION SHALL PROVIDE SECRETARIAL SERVICES TO THE BOARD OF GOVERNORS AND THE CHAIRPERSON AS REQUESTED.

SCHEMATIC #4

ADMINISTRATIVE ROLE OF THE BOARD OF GOVERNORS

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-100



- ESTABLISH POLICIES & PRACTICES
- ESTABLISH REGULATIONS IN RELATION TO

  COMPENSATION BENEFITS
  REHABILITATION
  ASSESSMENTS
  INVESTMENTS, ETC.
- CONSIDER & APPROVE OPERATING BUDGETS
- APPOINT AUDITORS
- REVIEW ACT AND REGULATIONS RECOMMEND NECESSARY AMMENDMENTS TO MINISTER
- APPOINT INVESTMENT MANAGER
- PERFORM EMPLOYEE EVALUATION OF C.E.O.
- FUTURE PLANNING
- DEFINE SENIOR EXECUTIVE FUNCTIONS
- FINAL APPROVAL ON ALL HIRINGS & APPOINTMENTS

- ESTABLISH POLICIES & PRACTICES
- ESTABLISH REGULATIONS IN RELATION TO:

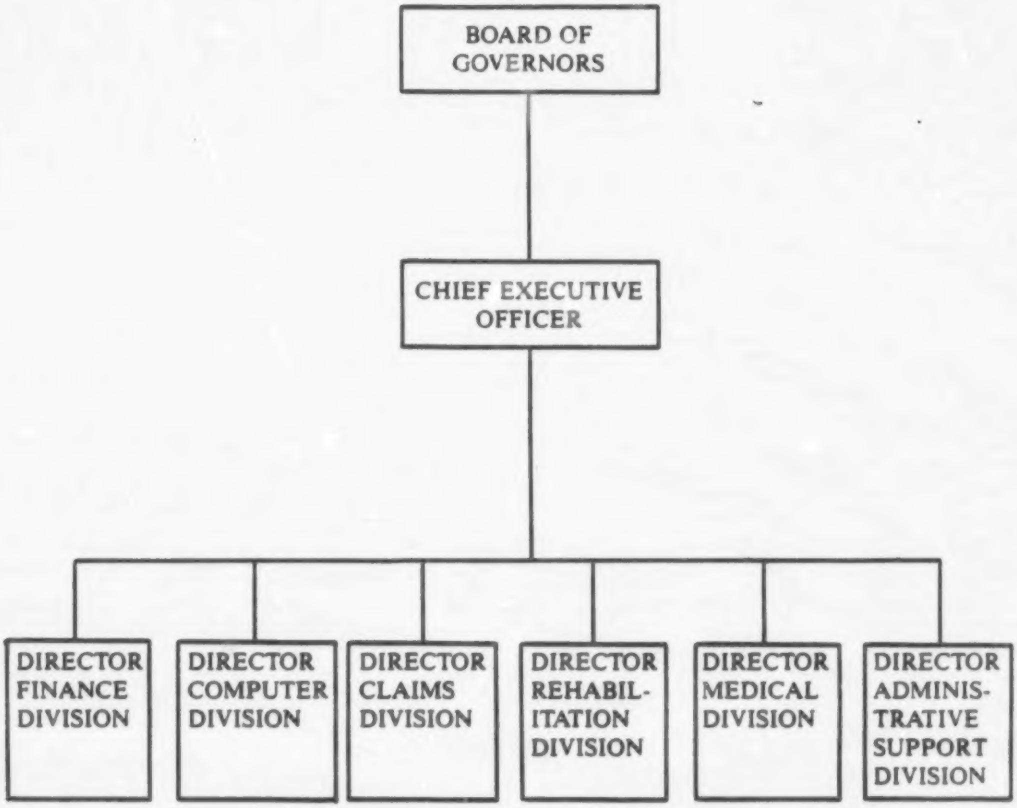
  APPEALS INQUIRIES
  PROCESS
- CONSIDER & APPROVE OPERATING BUDGET
- CONSIDER & DETERMINE APPEALS ALLEGING VIOLATIONS OF BOARD POLICIES - BY-LAWS - PRACTICES
- SUPERVISE C.A.C.
- PERFORM EMPLOYEE EVALUATION OF C.A.C.
- FUTURE PLANNING
- FINAL APPROVAL OF APPOINTMENTS TO APPEALS BOARD

SCHEMATIC #5

CHIEF EXECUTIVE OFFICER

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-101


BOARD OF GOVERNORS
CHIEF EXECUTIVE OFFICER
DIRECTOR FINANCE DIVISION
DIRECTOR COMPUTER DIVISION
DIRECTOR CLAIMS DIVISION
DIRECTOR REHABILITATION DIVISION
DIRECTOR MEDICAL DIVISION
DIRECTOR ADMINISTRATIVE SUPPORT DIVISION

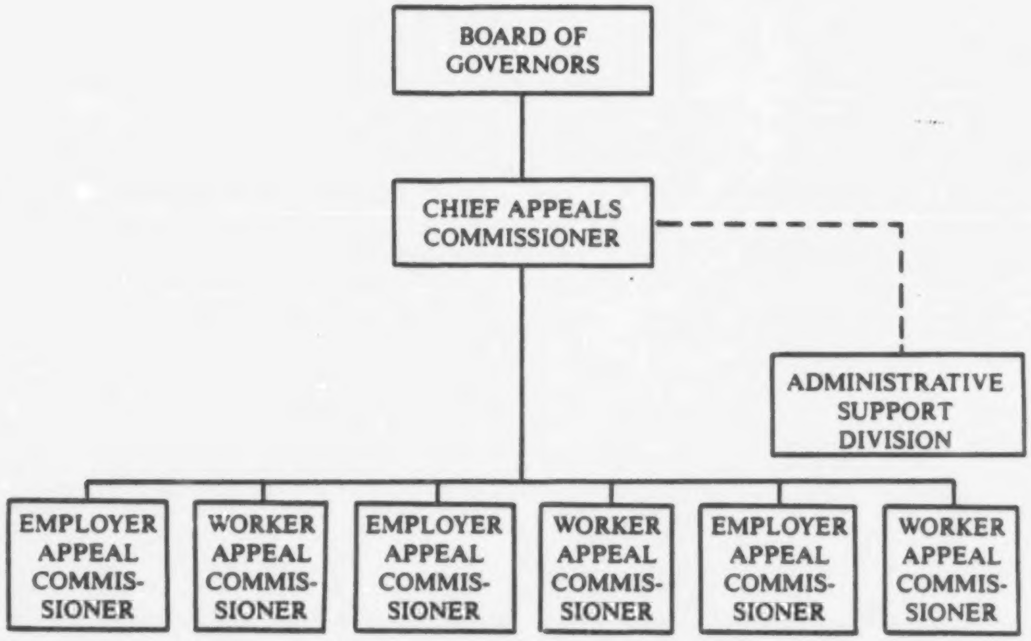
(NOTE: WITH REGARD TO THE SPECIFIC FUNCTIONS OF THE C.E.O. PLEASE REFER TO RECOMMENDATION L-39 HEREIN.)

SCHEMATIC #6

CHIEF APPEALS COMMISSIONER AND APPEALS BOARD

WORKERS' COMPENSATION BOARD

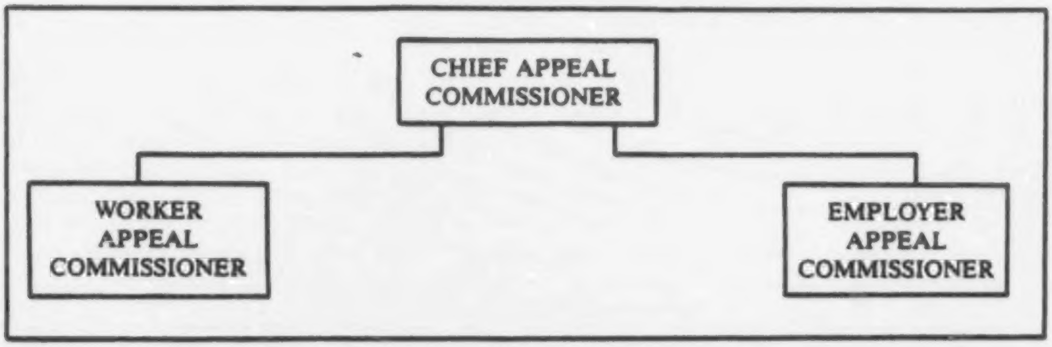
RECOMMENDATION S-102


BOARD OF GOVERNORS
CHIEF APPEALS COMMISSIONER
ADMINISTRATIVE SUPPORT DIVISION
EMPLOYER APPEAL COMMISSIONER
WORKER APPEAL COMMISSIONER
EMPLOYER APPEAL COMMISSIONER
WORKER APPEAL COMMISSIONER
EMPLOYER APPEAL COMMISSIONER
WORKER APPEAL COMMISSIONER

(SEE RECOMMENDATION L-44 HEREIN)

APPEAL PANEL FOR EACH INDIVIDUAL ENQUIRY

APPEAL PANEL

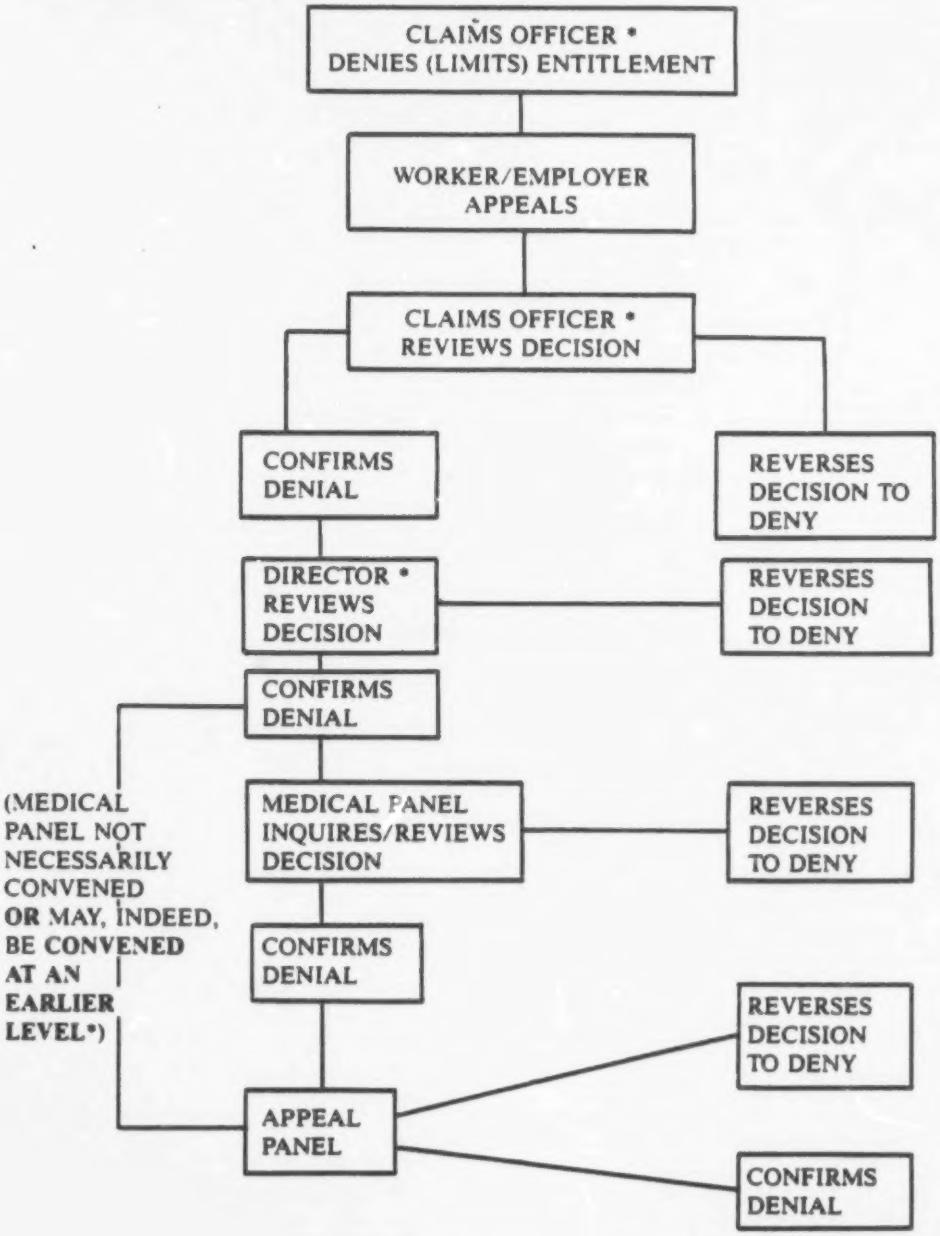

CHIEF APPEAL COMMISSIONER
WORKER APPEAL COMMISSIONER
EMPLOYER APPEAL COMMISSIONER

SCHEMATIC #7

CLAIMS APPEALS

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-103

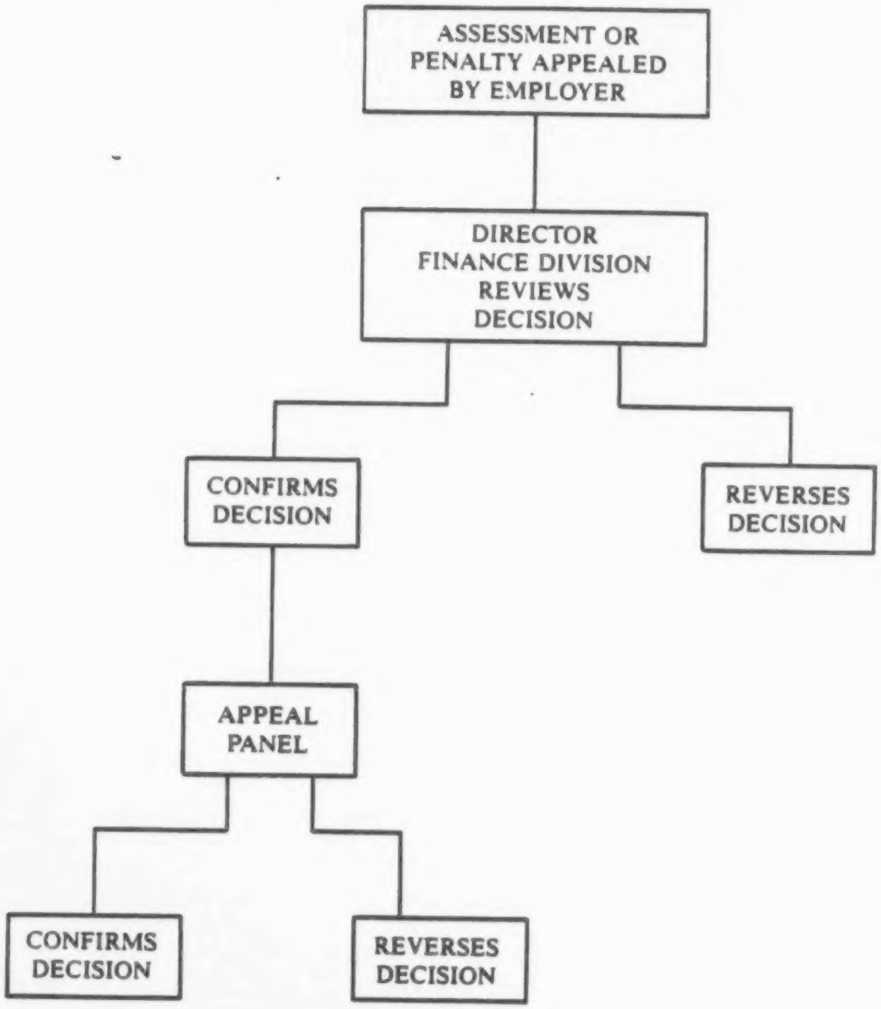

CLAIMS OFFICER *
DENIES (LIMITS) ENTITLEMENT
WORKER/EMPLOYER APPEALS
CLAIMS OFFICER * REVIEWS DECISION
CONFIRMS DENIAL
REVERSES DECISION TO DENY
DIRECTOR * REVIEWS DECISION
REVERSES DECISION TO DENY
CONFIRMS DENIAL
(MEDICAL PANEL NOT NECESSARILY CONVENED OR MAY, INDEED, BE CONVENED AT AN EARLIER LEVEL*)
MEDICAL PANEL INQUIRES/REVIEWS DECISION
REVERSES DECISION TO DENY
CONFIRMS DENIAL
REVERSES DECISION TO DENY
APPEAL PANEL
CONFIRMS DENIAL

SCHEMATIC #8

ASSESSMENT OR PENALTY APPEALS

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-104

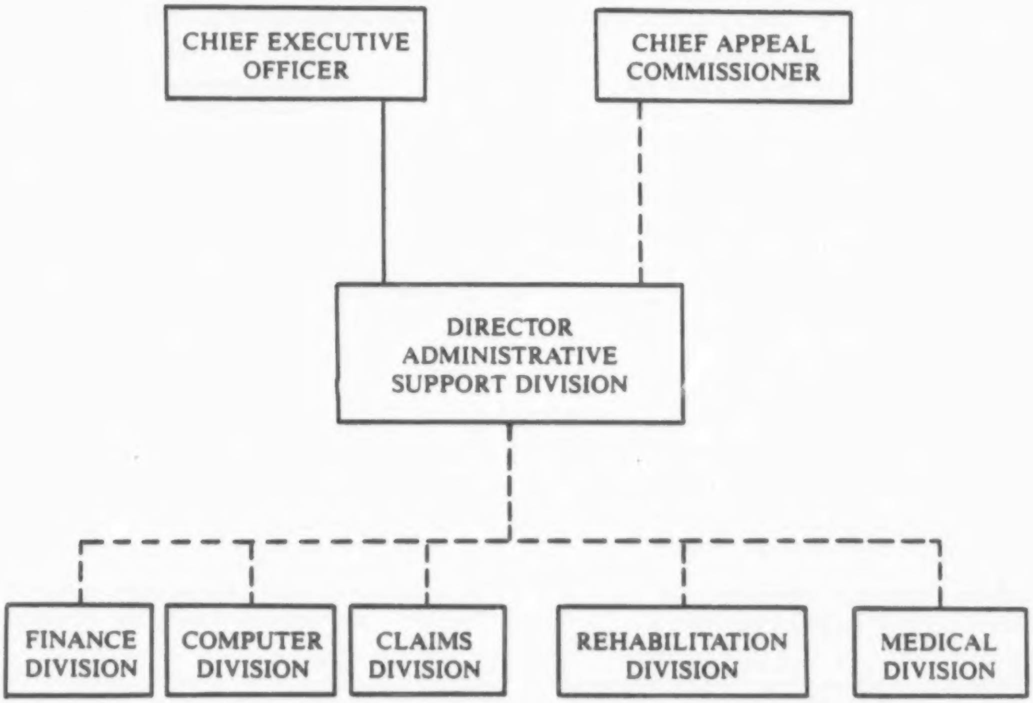

ASSESSMENT OR PENALTY APPEALED BY EMPLOYER
DIRECTOR FINANCE DIVISION REVIEWS DECISION
CONFIRMS DECISION
REVERSES DECISION
APPEAL PANEL
CONFIRMS DECISION
REVERSES DECISION

SCHEMATIC #9

ADMINISTRATIVE SUPPORT DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-105


CHIEF EXECUTIVE OFFICER
CHIEF APPEAL COMMISSIONER
DIRECTOR ADMINISTRATIVE SUPPORT DIVISION
FINANCE DIVISION
COMPUTER DIVISION
CLAIMS DIVISION
REHABILITATION DIVISION
MEDICAL DIVISION

THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION IS RESPONSIBLE TO, AND REPORTS TO THE CHIEF EXECUTIVE OFFICER.

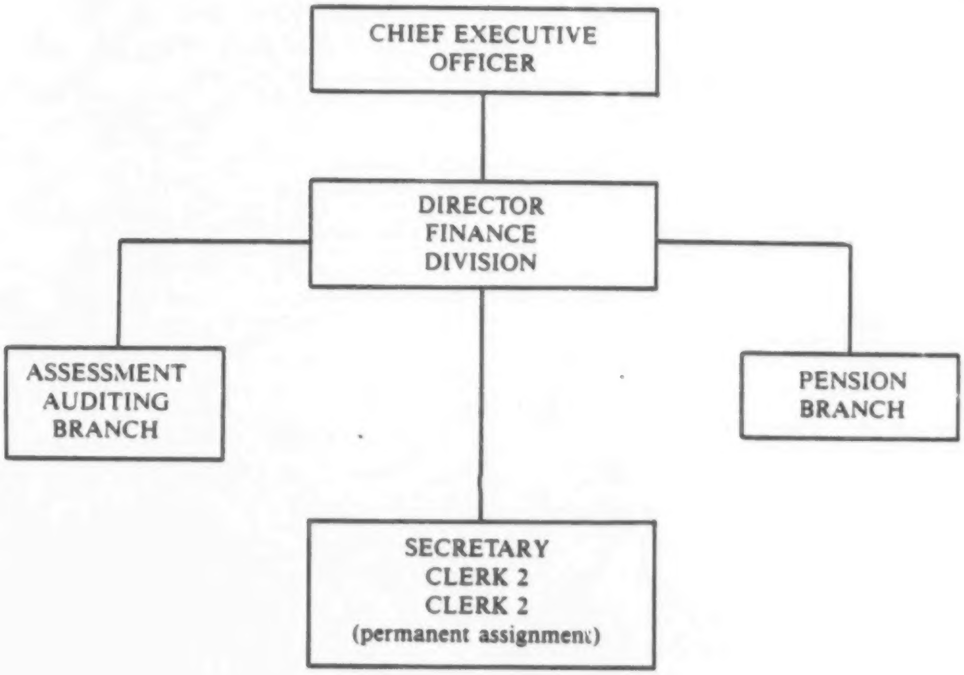
(THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION ASSIGNS SECRETARIAL AND CLERICAL SUPPORT UPON REQUEST OF INDIVIDUAL DIRECTORS - CHIEF APPEAL COMMISSIONER OR CHIEF EXECUTIVE OFFICER OR THE BOARD OF GOVERNORS)

SCHEMATIC #10

FINANCE DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-106


CHIEF EXECUTIVE OFFICER
DIRECTOR FINANCE DIVISION
ASSESSMENT AUDITING BRANCH
PENSION BRANCH
SECRETARY
CLERK 2
CLERK 2
(permanent assignment)

THE DIRECTOR OF THE FINANCE DIVISION IS RESPONSIBLE TO AND REPORTS TO THE CHIEF EXECUTIVE OFFICER.

THE FINANCE DIVISION HAS TWO DISTINCT BRANCHES, i.e. THE ASSESSMENT AND AUDITING BRANCH AND THE PENSION BRANCH.

PERMANENTLY ASSIGNED TO THIS DIVISION ARE ONE SECRETARY AND TWO CLERK 2'S.

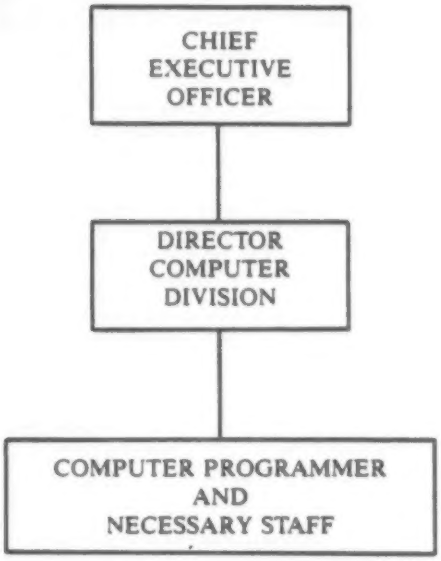
IN TIMES OF EXCESSIVE WORKLOAD, THE DIRECTOR MAY APPROACH THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION FOR ADDITIONAL CLERICAL ASSISTANCE.

SCHEMATIC #11

COMPUTER DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-107


CHIEF EXECUTIVE OFFICER
DIRECTOR COMPUTER DIVISION
COMPUTER PROGRAMMER AND NECESSARY STAFF

THE DIRECTOR OF THE COMPUTER DIVISION IS RESPONSIBLE TO AND REPORTS TO THE CHIEF EXECUTIVE OFFICER.

AT ANY TIME THAT THIS DIVISION NEEDS CLERICAL ASSISTANCE, THE DIRECTOR SHALL REQUEST SUCH SUPPORT FROM THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION.

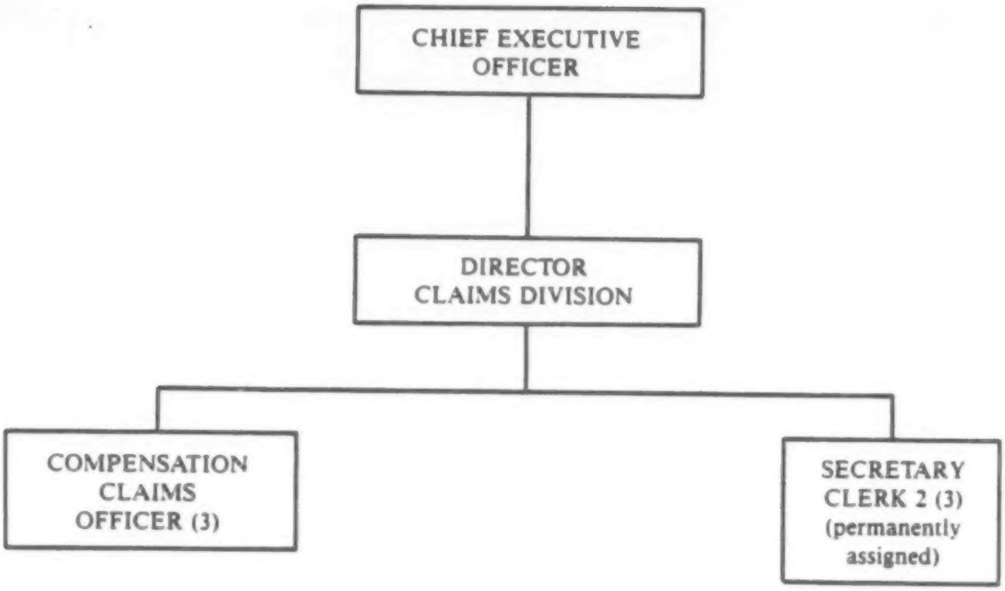
THIS DIVISION SHALL SUPPLY ALL NECESSARY COMPUTER SERVICES TO THE OTHER DIVISIONS, THE APPEALS BOARD AND THE BOARD OF GOVERNORS.

SCHEMATIC #12

CLAIMS DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-108


CHIEF EXECUTIVE OFFICER
DIRECTOR CLAIMS DIVISION
COMPENSATION CLAIMS OFFICER (3)
SECRETARY CLERK 2 (3) (permanently assigned)

THE DIRECTOR OF THE CLAIMS DIVISION IS RESPONSIBLE TO AND REPORTS TO THE CHIEF EXECUTIVE OFFICER.

THIS DIVISION SHALL BE COMPRISED OF THREE CLAIMS OFFICERS, A SECRETARY AND THREE CLERK 2'S WHO SHALL BE PERMANENTLY ASSIGNED TO THE DIVISION.

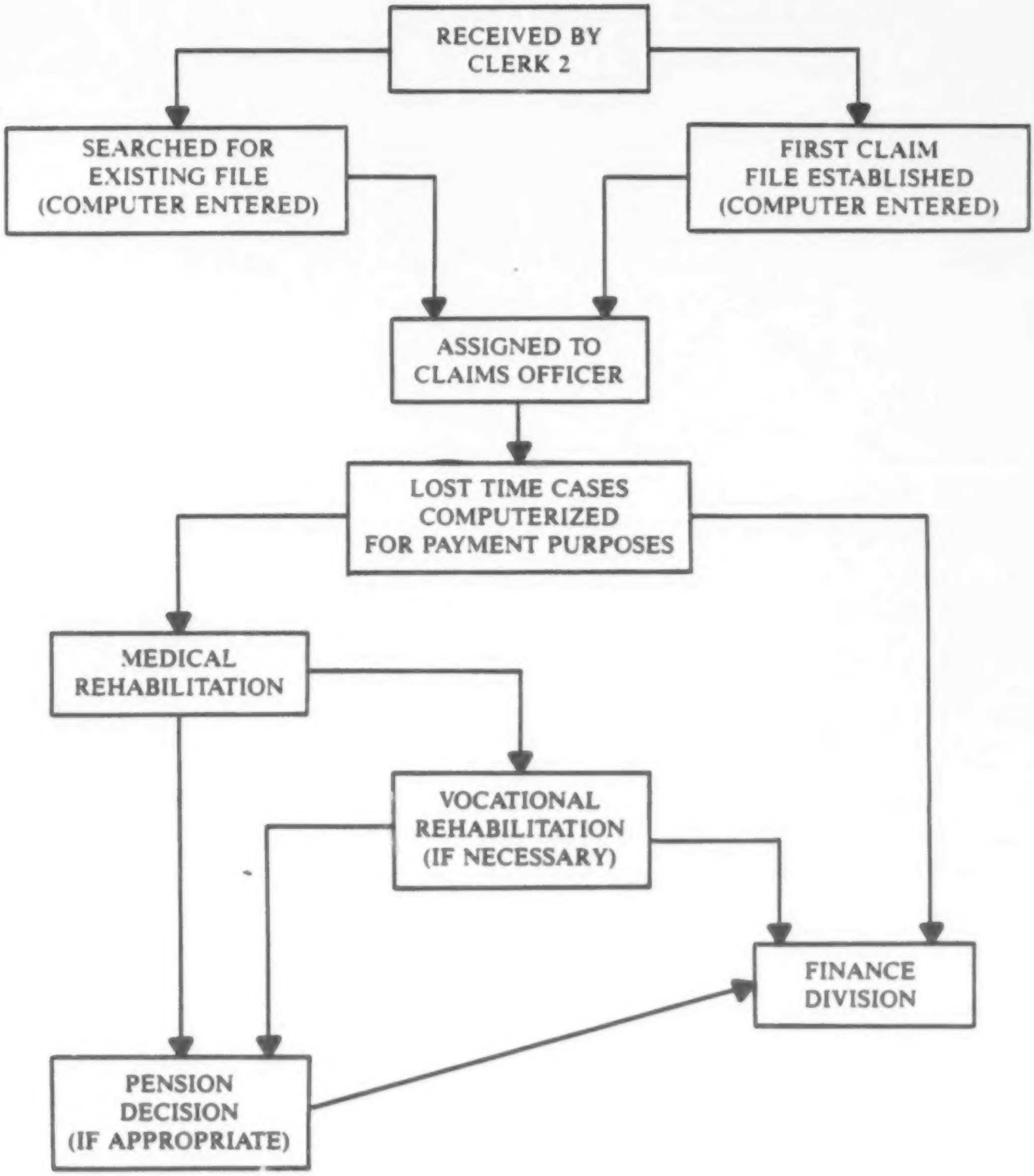
IN TIMES OF EXCESSIVE WORK OVERLOAD, THE DIRECTOR MAY REQUEST ADDITIONAL CLERICAL ASSISTANCE FROM THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION.

SCHEMATIC #13

DEPARTMENTAL FLOW OF CLAIMS APPLICATION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-109



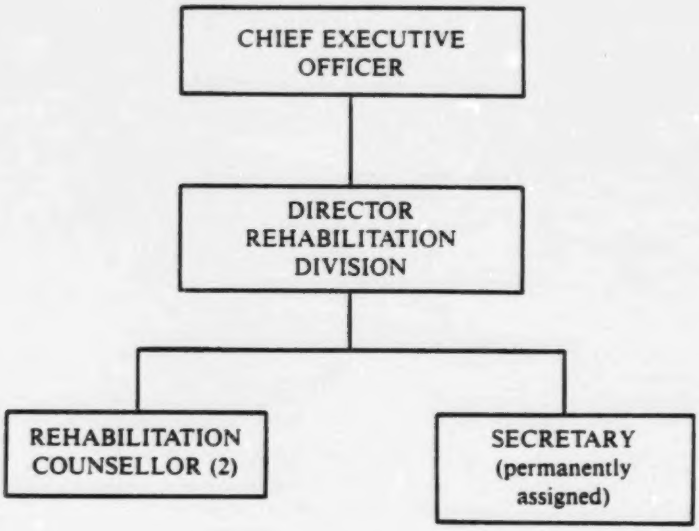
RECEIVED BY CLERK 2
SEARCHED FOR EXISTING FILE (COMPUTER ENTERED)
FIRST CLAIM FILE ESTABLISHED (COMPUTER ENTERED)
ASSIGNED TO CLAIMS OFFICER
LOST TIME CASES COMPUTERIZED FOR PAYMENT PURPOSES
MEDICAL REHABILITATION
VOCATIONAL REHABILITATION (IF NECESSARY)
FINANCE DIVISION
PENSION DECISION (IF APPROPRIATE)

SCHEMATIC #14

REHABILITATION DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-110


CHIEF EXECUTIVE OFFICER
DIRECTOR REHABILITATION DIVISION
REHABILITATION COUNSELLOR (2)
SECRETARY (permanently assigned)

THE DIRECTOR OF THE REHABILITATION DIVISION SHALL BE RESPONSIBLE TO AND REPORT TO THE CHIEF EXECUTIVE OFFICER.

THIS DIVISION SHALL BE COMPRISED OF TWO REHABILITATION COUNSELLORS AND A PERMANENTLY ASSIGNED SECRETARY.

SHOULD THE DIVISION NEED ADDITIONAL CLERICAL ASSISTANCE IN TIMES OF WORK OVERLOAD THE DIRECTOR MAY REQUEST SUCH ASSISTANCE FROM THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION.

SCHEMATIC #15

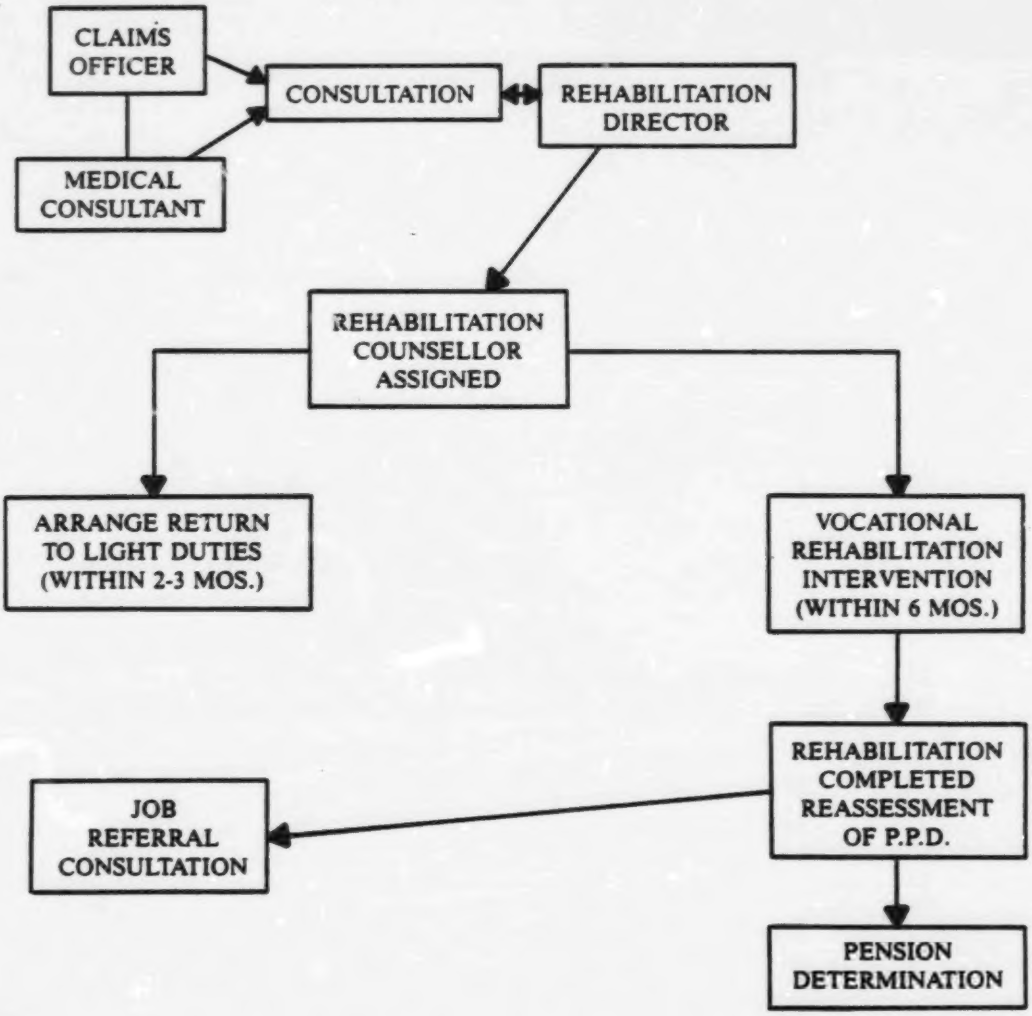
REHABILITATION SYSTEM

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-111

THE PREAMBLE TO OUR RECOMMENDATION L-33 AND THE RECOMMENDATION ITSELF, TESTIFY TO THE PRIORITY WE PLACE UPON REHABILITATION SERVICES.

IT IS CRITICAL THAT QUALIFIED COUNSELLORS BE HIRED INTO THESE POSITIONS.

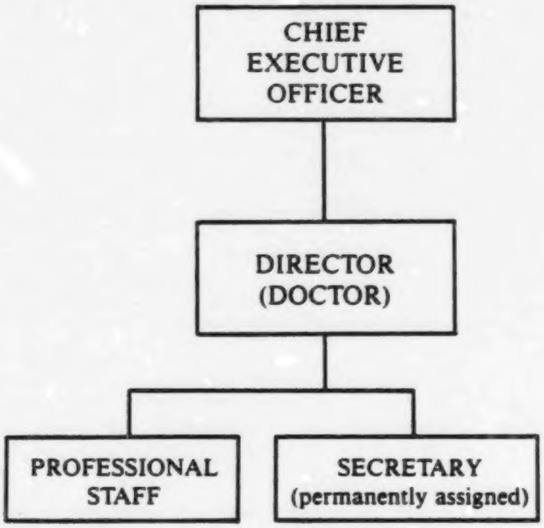

CLAIMS OFFICER
MEDICAL CONSULTANT
CONSULTATION
REHABILITATION DIRECTOR
REHABILITATION COUNSELLOR ASSIGNED
ARRANGE RETURN TO LIGHT DUTIES (WITHIN 2-3 MOS.)
VOCATIONAL REHABILITATION INTERVENTION (WITHIN 6 MOS.)
REHABILITATION COMPLETED REASSESSMENT OF P.P.D.
JOB REFERRAL CONSULTATION
PENSION DETERMINATION

SCHEMATIC #16

MEDICAL DIVISION

WORKERS' COMPENSATION BOARD

RECOMMENDATION S-112


CHIEF EXECUTIVE OFFICER
DIRECTOR (DOCTOR)
PROFESSIONAL STAFF
SECRETARY (permanently assigned)

THE DIRECTOR OF THIS DIVISION, WHO SHOULD BE A DOCTOR WHO IS QUALIFIED AND TRAINED IN OCCUPATIONAL MEDICINE, IS RESPONSIBLE TO AND REPORTS TO THE CHIEF EXECUTIVE OFFICER.

THIS DIVISION SHALL HAVE ASSIGNED TO IT A SECRETARY. SHOULD THE NEED ARISE FOR THE ASSISTANCE OF ADDITIONAL CLERICAL SERVICES IN ANY WORK OVERLOAD SITUATION, THE DIRECTOR MAY REQUEST SUCH ADDITIONAL CLERICAL SERVICES FROM THE DIRECTOR OF THE ADMINISTRATIVE SUPPORT DIVISION.

WE LEAVE IT TO THE ADMINISTRATION OF THE BOARD WITH REGARD TO DETERMINING THE NEED FOR ADDITIONAL PROFESSIONAL STAFF. HOWEVER, WE WOULD POINT THE BOARD TO PAGES 131, 132 AND 133 OF THE *MANITOBA REPORT* WHERE SOME CAUTION IS EXPRESSED WITH REGARD TO THE ROLE OF PROFESSIONAL STAFF WITHIN THE COMPENSATION SYSTEM.

WE WOULD NOT SUPPORT THE IDEA OF HIRING MEMBERS OF PROFESSIONAL STAFF ONTO THE BOARD FOR PURPOSES OF RELYING ON THEIR EXPERTISE IN MONITORING THE APPROPRIATENESS OF TREATMENT PRESCRIBED BY PHYSICIANS IN THE COMMUNITY, NOR WOULD IT BE APPROPRIATE THAT SUCH PROFESSIONALS COMMENT ON INDIVIDUAL CASES.

AS STATED IN THE *MANITOBA REPORT* AT PAGE 131:

> "REALISTICALLY, THE WORKERS' COMPENSATION BOARD CANNOT BE INTERVENTIONIST IN MEDICAL TREATMENT. THE COSTS OF HAVING THE NECESSARY SPECIALISTS IN-HOUSE WOULD QUICKLY BECOME PROHIBITIVE. EVEN IN THE EVENT THAT THE SYSTEM COULD BEAR THE COST OF A FULL STAFF OF APPROPRIATE SPECIALISTS, THIS MODEL IS, AS HAS ALREADY BEEN INDICATED, INAPPROPRIATE WITHIN THE WORKERS' COMPENSATION MODEL AS WE UNDERSTAND IT."

IN THIS REGARD WE CONCUR WHOLEHEARTEDLY.

RECOMMENDATION G-113

A) THAT THE *WORKERS' COMPENSATION ACT* BE AMENDED TO REQUIRE A REVIEW OF THE WORKERS' COMPENSATION SYSTEM EVERY FIVE YEARS.

B) THAT THE AMENDMENT REQUIRE A BALANCED COMMITTEE OF EMPLOYERS REPRESENTATIVES AND WORKERS REPRESENTAIVES TO BE APPOINTED FOR SUCH A REVIEW.

C) THAT A NEUTRAL CHAIRPERSON BE APPOINTED FOR SUCH A REVIEW.

RECOMMENDATION G-114

A) THAT THE GOVERNMENT TABLE IN THE LEGISLATURE WITHIN ONE YEAR OF RECEIVING THIS REPORT, A PROGRESS REPORT ON THE ACTUAL IMPLEMENTATION, OR PROPOSED IMPLEMENTATION, OF THOSE RECOMMENDATIONS WHICH ARE WITHIN THE GOVERNMENT'S JURISDICTION.

B) THAT THE WORKERS' COMPENSATION BOARD PUBLISH A SIMILAR PROGRESS REPORT IN ITS ANNUAL REPORT.

RECOMMENDATIION G-115

(A) THAT GOVERNMENT IMMEDIATELY MOVE TO AFFECT THE AMENDMENT OF THE WORKERS' COMPENSATION ACT IN ACCORD WITH OUR EARLIER RECOMMENDATIONS L-34, L-35, L-36, L-37, L-38 AND L-39.

(B) THAT THE BOARD, UPON THE AMENDMENT TO THE ACT AS PER OUR RECOMMENDATION ABOVE, IMMEDIATELY COMMENCE THE PROCESS OF IDENTIFYING AND APPOINTING THE CHIEF EXECUTIVE OFFICER.